

## **CATERING AND CONCESSION AGREEMENT**

This Catering and Concession Agreement is made and entered into this \_\_\_\_\_ day of July, 2011, by and between Powers Management, LLC, a Tennessee limited liability company, with an office at 501 Broadway, Nashville, Tennessee 37203 ("Operator") and Smoky Mountain Sportservice, Inc., a Tennessee corporation with an office at 40 Fountain Plaza, Buffalo, New York 14202 ("Contractor").

### **WITNESSETH:**

WHEREAS, pursuant to that certain Catering and Concession Agreement, dated as of October 2, 1996, by and between LLM/HHI, Ltd. d/b/a Leisure Management International ("LMI"), as agent for the Metropolitan Government of Nashville and Davidson County and the Metropolitan Development and Housing Agency (collectively, "Metro"), and Sportservice Corporation, now known as Delaware North Companies Sportservice, Inc. ("Sportservice"), Sportservice was granted the right and obligation to provide certain food, beverage and merchandise services at the Bridgestone Arena in Nashville, Tennessee f/k/a the Nashville Arena the Gaylord Entertainment Center, and Sommet Center (the "Facility") (such Agreement, as amended by that certain Amendment to Catering and Concession Agreement dated October 8, 1998 and a Second Amendment dated September 1, 2000, shall hereinafter be referred to as the "Original Concession Agreement");

WHEREAS, pursuant to that certain Assignment and Assumption, dated November 1, 1996, by and between Sportservice and Contractor, Sportservice assigned all of its rights under the Original Concession Agreement to Contractor, a wholly-owned subsidiary of Sportservice, and Contractor assumed all of the obligations of Sportservice under the Original Concession Agreement;

WHEREAS, pursuant to that certain Quitclaim Deed, dated as of December 18, 1996, by and between Metro and the Sports Authority of the Metropolitan Government of Nashville and Davidson County ("Sports Authority"), Metro transferred ownership of the Facility to the Sports Authority (hereinafter, the Sports Authority shall be referred to as the "Owner");

WHEREAS, pursuant to the terms of an Operating and Management Agreement dated as of July 1, 2007 between the Owner and Operator (the "Management Agreement"), the Owner granted Operator the exclusive right to operate and manage the Facility; and

WHEREAS, the Operator is authorized by the Owner to enter into such agreements as Operator deems necessary, pursuant to the obligations of the parties (as between the Sports Authority and the Operator), contained within the Management Agreement, in conjunction with the management and operation of the Facility, including, without limitation, this Agreement; and

WHEREAS, the Operator and Contractor desire to terminate the Original Concession Agreement and enter into this Agreement;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, and intending to be legally bound hereby, Operator and Contractor agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**1.1 Definitions.** All capitalized terms used herein unless otherwise defined herein shall be defined as follows:

“Ad Valorem Tax Payment” shall mean an ad valorem tax imposed, assessed or levied by Metro (or any tax jurisdiction that is a subdivision of Metro ) on or with respect to Contractor's rights and interests created by this Agreement, including, but not limited to, Contractor's rights of occupancy and use of the Service Areas and Service Equipment; provided, however, the foregoing notwithstanding, in the event that Contractor receives any written notice of any such Ad Valorem Tax Payment, immediate notice thereof shall promptly be provided to Operator and Owner. Owner shall have the right (but not the obligation) to initiate (or cause to be initiated) a contest of any such Ad Valorem Tax Payment, in which event Operator and Contractor shall cooperate in its opposing or contesting of such levy or assessment. In the event of any such contest, Owner, Operator and Contractor shall each bear their own costs and expenses in connection therewith.

“Affiliate” shall mean any Person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the specified Person.

“Agreement” shall mean this Catering and Concession Agreement.

“Branded Products” shall mean any products sold by Contractor pursuant to a Branded Products Agreement.

“Branded Products Agreements” shall have the meaning set forth in Section 4.1(c).

“Branded Products Charges” shall mean the royalties, franchise, license and advertising fees and other similar charges and all rental payments for vendor-supplied equipment actually paid by Contractor to a Branded Products provider pursuant to a Branded Products Agreement.

“Capital Investment ” shall have the meaning set forth in Section 3.4.

“Catered Event” shall mean any event, assembly, function or similar gathering at which Catering Services or Outside Catering are provided by Contractor and any day upon which the Team Club in the Facility is operated by Contractor.

“Catering Services” shall mean the preparation and sale of Refreshments including table and banquet type meal service for conventions, assemblies and other meetings to be held at the Facility where payment for such services is invoiced to a Person (including, but not limited to, where applicable under this Agreement, backstage catering), first approved by Operator in writing.

“Change of Control” shall mean: (i) change in the organization documents or bylaws of Contractor or of its Directing Person which causes Control of Contractor or the Directing Person to reside in an Unaffiliated Person; (ii) the sale, assignment, pledge, gift or other transfer of all or substantially all of the business and/or assets of Contractor or of the Directing Person thereof to an Unaffiliated Person; (iii) the merger or consolidation of Contractor or the Directing Person if, in the case of Contractor, the surviving entity is not controlled by the Directing Person or, in the case of the Directing Person, the majority of the members of the governing body of the surviving entity are not comprised of persons who are members of the governing body of the Directing Person immediately prior to such merger or consolidation, or (iv) the entering into a lease, operating agreement, management agreement or other arrangement pursuant to which: (1) all or substantially all of the assets of Contractor or of the Directing Person thereof are leased to an Unaffiliated Person, (2) responsibility for the day to day operations of all or substantially all of the business and/or assets of Contractor or of the Directing Person thereof are transferred to an Unaffiliated Person, or (3) responsibility for the day to day management of all or substantially all of the business and/or assets of the Contractor or the Directing Person thereof are transferred to an Unaffiliated Person.

“Claims” shall have the meaning set forth in Section 7.2.

“Club Bar” shall mean that certain area designated as the Club Bar in the Original Concession Agreement.

“Club Seating Sales” shall mean, for any Fiscal Year, the aggregate amount of Gross Receipts for such Fiscal Year allocable to the Club Seating Services.

“Club Seating Services” shall mean the sale of Refreshments to premium or club seating areas (“Club Seating”) including the Club Bar area as described in the Original Concession Agreement. The Club Bar shall be treated at all times as a Club Seating Sales area both for the sale of Refreshments by Contractor and computation of the Sales Fee and shall be a premium area in terms of the level of quality, variety and performance of Services in accordance with Quality Arena Standards (such as, by way of example, and not of limitation, an upscale menu, table meal service, to the extent applicable, and corresponding uniformed personnel).

“Commencement Date” shall mean July \_\_\_, 2011.

“Common Areas” shall mean all loading docks and facilities, elevators,

common passage areas, restrooms, locker rooms and laundry facilities and other areas of the Facility, to the extent designated at any time and from time to time by the Operator, as a common area and which may be used by Contractor, on a non-exclusive basis, subject to the terms of this Agreement and any rules, regulations and procedures, from time to time, promulgated by Operator with respect thereto.

“Compensation of On-Site Merchandise Personnel” shall mean the total wages and other compensation paid to an employee working for Contractor with respect to Merchandise Operations, together with the cost of providing “fringe benefits,” employer's share of social security, disability and worker compensation, employer taxes and other employment costs with respect to such personnel, all to be set forth in the Merchandise Budget.

“Concession Event” shall mean any event, assembly, function or similar gathering at the Facility at which Concession Services and/or Club Seating Services, Suite Services and/or Restaurant Services are provided by Contractor.

“Concession Sales” shall mean, for any Fiscal Year, the aggregate amount of Gross Receipts for such Fiscal Year allocable to the Concession Services.

“Concession Services” shall mean the preparation and sale of Refreshments to the public through concession stands, either fixed or portable, both within the Facility and at areas outside the Facility which are first approved in writing by Operator, whether at a Public Event or otherwise.

“Conditions to a Transfer” shall have the meaning set forth in Section 9.1(b).

“Contractor” shall mean Smoky Mountain Sportservice, Inc., a Tennessee corporation.

“Contractor Event of Default” shall mean those certain events of default by Contractor more particularly described in Section 8.3.

“Control” with respect to any entity, shall mean the power to elect or appoint through ownership or otherwise a majority of the Persons comprising the governing body of the entity.

“Default Rate” shall mean a rate per annum equal to the lesser of (i) a varying rate per annum that is equal to four percent (4%) per annum over the interest rate quoted from time to time by NationsBank of Tennessee, N.A., or its successor, as its prime commercial or similar reference rate (whether or not such rate is its best lending rate), with adjustments in that varying rate to be made on the same date as any change in that rate or (ii) the maximum non-

usurious rate permitted by Legal Requirements, with adjustments in that varying rate to be made on the same day as any change in that rate.

“Design Rights” shall mean all intellectual industrial and other proprietary rights in and to the design, structure or image of the Facility or any portion thereof, including, without limitation, any related trademarks, logos, trade names, service marks or any word, symbol or combination thereof, which is used by Owner and/or Operator to identify the Facility or any part thereof, including the right to copy, reproduce or otherwise exploit the same. Contractor acknowledges and agrees that any and all use of the Design Rights shall inure solely to the benefit of the Owner.

“Directing Person” shall mean the Person which, as of the Commencement Date, has the power to elect or appoint, directly or indirectly, a majority of the Persons comprising the governing body of Contractor.

“Exculpatory Language” shall mean the language contained in the following:

“\_\_\_\_\_ acknowledges that this agreement imposes no contractual obligations upon the Sports Authority of the Metropolitan Government of Nashville and Davidson County, Powers Management, LLC and the Nashville Hockey Club Limited Partnership and that in the event of a default or breach under this agreement by Contractor of any kind or nature whatsoever, \_\_\_\_\_ shall look solely to Contractor at the time of the default or breach for remedy or relief. \_\_\_\_\_ hereby expressly waives and releases any and all claims against the Sports Authority of the Metropolitan Government of Nashville and Davidson County, Powers Management, LLC and the Nashville Hockey Club Limited Partnership and their respective officers, partners, members, officials, directors, shareholders, agents, attorneys, employees, contractors and consultants, for injury, damage to property or interruption of its use of the Facility, irrespective of the cause of any such injury, damage or interruption, including without limitation, any act or omission (whether negligent or otherwise) of the Sports Authority of the Metropolitan Government of Nashville and Davidson County Powers Management, LLC and/or the Nashville Hockey Club Limited Partnership.”

“Facility” shall mean that certain public assembly facility located in Nashville, Davidson County, Tennessee and commonly known as “Bridgestone Arena,” or such other name as shall from time to time be selected by Team, including all areas within the Facility Site under the control of Operator, but specifically excluding the Arena rehearsal hall, the area operated by the Nashville Convention and Visitors Bureau, the Tennessee Sports Hall of Fame, the broadcast tower, including those areas used (at the time of execution of this Amended and Restated Agreement) by XM Satellite Radio, that certain office space located on the second floor of the Arena, which is currently used for Metropolitan Government’s Register of Deeds Office, and the Central Precinct of the Nashville Police Department (the “Excluded Areas”). Further,

any other areas on or around the Facility that are controlled by Operator at the time of execution but which may not be controlled by Operator in the future (including, but not limited to the plaza area outside the Fifth Avenue entrance of the Facility) shall be excluded from the definition of Facility at such time as the Operator no longer has control over such area(s).

“Facility Contract” shall mean the Management Agreement, as same may be modified or amended from time to time.

“Fiscal Year” shall mean July 1 to June 30, or such other fiscal year period as may from time to time be established by mutual agreement of Operator and Contractor. The first Fiscal Year under this Agreement shall commence on July 1, 2011, and shall terminate on June 30, 2012. The last Fiscal Year will be a partial year from July 1 to September 30, or such other date of termination.

“Food Concession Facilities” shall mean all those areas of the Arena (explicitly excluding such areas that may exist within Excluded Areas) to be occupied and used exclusively by the Contractor hereunder, including, but not limited to, all commissary and food and beverage service storage areas, food and beverage wash areas, pantry areas, kitchens, food preparation and food and beverage cleaning areas, change rooms for food and beverage personnel, concession stands, booths, bars and kiosks, public and service bars and grills, restaurant areas, food and beverage training facilities, offices, money county and record-keeping rooms dedicated for the sale of Refreshments in the Arena. Those areas of the Arena to be occupied by Mobile Stands shall also be considered Food Concession Facilities although the location of same may be determined by the Operator and Contractor from time to time hereafter by mutual agreement. The Food Concession Facilities shall include any facilities which may be added by mutual agreement of Operator and Contractor. As of the Commencement Date, the Food Concession Facilities and the locations of the Mobile Stands will be the same as operated by Contractor and its subcontractors or licensees during the 2010-2011 NHL hockey season.

“Food Service Equipment” shall mean all equipment used by Contractor from time to time for the sale of Refreshments at the Arena including all equipment used for storing food and/or beverages, preparing, cooking, serving, holding, selling, and vending same, warewashing equipment, all inventory control and POS Equipment, security and surveillance equipment, computer hardware, software and peripherals, registers, telephones and telecommunication equipment, all Mobile Stands, all Smallwares, all Small Equipment, all lifts, transports and motor vehicles used in the sale of Refreshments in the Arena and all bar and beverage equipment, all refrigeration equipment, coolers and walk-ins, all furniture, furnishings and decorations, office furniture and equipment and all other fixed assets located in the Food Concession Facilities, from time to time, such as signage, graphics and menu boards for concession stands, bars and other public food/beverage service outlets. As of the Commencement Date, the Food Service Equipment includes all items used by Contractor or its subcontractors or licensees during the 2010-2011 NHL hockey season. The Food Service Equipment will include all items purchased with the Capital Investment Allowance and any

items purchased by Owner or Operator during the Term.

“Governmental Authority” shall mean any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental or quasi-governmental unit (federal, state, county, district, municipal, Owner or otherwise), whether now or hereafter in existence.

“Gross Receipts” shall mean the total amounts paid or payable to Contractor in connection with Contractor's provision of the Services, whether evidenced by cash, check, credit, charge account or otherwise, and shall include the amounts received from the sale of any items from the Facility, together with the amounts received from all orders taken or received at the Facility, whether such orders be filled from there or elsewhere, less only:

(i) Any sales or other taxes collected in connection with the exercise of the Sales Concession or use tax assessed in lieu thereof which are paid to the appropriate Governmental Authority by Contractor;

(ii) Gratuities or service charges collected by Contractor, to the extent that such gratuities or service charges are actually paid over to employees of Contractor:

(iii) The amount of any reduction in any sale made to the Operator or a third party at the request of the Operator;

(iv) Meals consumed by Contractors' on-duty personnel at no cost to such personnel;

(v) the amount of deposits to the Reserve Fund;

(vi) Amounts received by Contractor for the rental of any equipment or furniture to the extent that such amount is then paid over by Contractor to a third party vendor or lessor; and

(vii) In the case of the Merchandise Operations, the amount of any returns.

In no event shall there be deducted from Gross Receipts any taxes imposed upon the operations or existence of Contractor, such as, without limitation, income taxes (whether federal, state or municipal), franchise taxes, ad valorem taxes, and other similar impositions, nor shall there be deducted any amount or reserve for bad debts from sales on credit (unless in the case of bad debt such bad debt has been first approved by Operator, in its sole discretion, or incurred at the direction of Operator) or bank charges or service charges for credit or credit card sales.

“Hazardous Substances” shall mean substances that are defined or listed in, or otherwise classified pursuant to any Legal Requirements (or other enforceable criteria and guidelines promulgated pursuant thereto) as “hazardous substances,” “hazardous materials,”

“hazardous wastes,” “toxic substances,” “pollutants,” “contaminants,” “radioactive material,” “petroleum or any fraction thereof” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, radioactivity, carcinogenicity, reproductive toxicity or “EP toxicity” and petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy.

“Impositions” shall mean any tax, charge or imposition of whatever kind or nature, including but not limited to, amusement taxes, sales taxes, excise taxes, rent taxes, use taxes or substitutes therefor imposed by any Governmental Authority.

“Indemnified Party” shall have the meaning set forth in Section 7.2.

“Legal Requirements” shall mean any and all present and future laws, statutes, ordinances, decisions, decrees, statutes, rulings, rules, codes, procedures, orders, regulations, permits, certificates, licenses and other requirements of any Governmental Authority including, without limitation, any safety laws, health laws, environmental laws and laws regarding the rights of and obligations to the handicapped and disabled, including without limitation, the Occupational Safety And Health Act and the Americans With Disabilities Act.

“Management Agreement” shall have the meaning set forth in the Recitals to this Agreement.

“Merchandise” shall mean (i) all major league professional sports related novelties, toys, souvenirs, clothing, garments and other professional sports related merchandise and goods agreed upon by the parties for sale in the Merchandise Locations (“Pro-Sports Merchandise”) and (ii) such other merchandise (“Other Merchandise”) as may be mutually approved by Operator and Contractor.

“Merchandise Budget” shall mean the budget for the Merchandise Operations including, but not limited to, any capital expenditures for improvements, furniture, fixtures and equipment and related design costs and fees, as such budget is mutually agreed to by Operator and Contractor for each Fiscal Year during the Term. For the elimination of doubt, the budget for Merchandise Operations cannot move forward without the explicit agreement of the Operator, inasmuch as any alterations or improvements to the Facility must be approved by the Operator in accordance with its obligations and responsibilities under the Management Agreement.

“Merchandise Equipment” shall mean all equipment used for the sale of Merchandise in the Arena. As of the Commencement Date, the Merchandise Equipment will be the same as operated by Contractor during the 2010-2011 NHL hockey season.

“Merchandise Expenses” shall mean all actual operating expenses and costs incurred by Contractor in the operation of the Merchandise Operations and all expenditures by Contractor for the design and construction of improvements, furniture, fixtures and equipment required in connection with the Merchandise Operations (the “Merchandise



Improvements”), all of which shall be subject to the Merchandise Budget approved by the parties. In particular, such Merchandise Expenses shall include, but not be limited to, the following categories: (i) costs of Merchandise; (ii) Compensation of On-site Merchandise Personnel; (iii) all supplies, material, tools and equipment used exclusively with respect to the Merchandise Operations including, but not limited to, janitorial and cleaning supplies; (iv) insurance premiums directly related to the Merchandise Locations; (v) applicable Impositions; and (vi) all expenditures made by Contractor related to the build out of improvements for Merchandise Locations and installation of applicable furniture, fixtures and equipment therein, including but not limited to, architectural and engineering costs and the cost of any applicable mobile carts and kiosks. Merchandise Expenses shall be computed in accordance with generally accepted accounting principals, consistently applied, on an accrual basis; provided, however, the expenses described in subsection (vi) may be expensed in full in the Fiscal Year in which expended.

“Merchandise Facilities” shall mean the areas of the Arena where Merchandise is offered for sale, wherever located in the Arena (whether a fixed location or a Mobile Stand). As of the Commencement Date, the Merchandise Facilities will be the same as operated by Contractor during the 2010-2011 NHL hockey season.

“Merchandise Operations” shall mean the operations conducted by Contractor in connection with the selection, storage, display, promotion and sale of Merchandise in the Merchandise Facilities.

“Merchandise Profits” shall mean the difference between (i) that portion of Gross Receipts resulting from the Merchandise Operations received during any Fiscal Year and (ii) Merchandise Expenses incurred during the same Fiscal Year, provided that Gross Receipts from the Merchandise Operations exceed Merchandise Expenses for such period; and provided further that to the extent that any expenses referenced in clause (vi) of the definition “Merchandise Expenses” are not offset against Merchandise Profits from any Fiscal Year, such amount which has not been offset shall carry forward to the following Fiscal Year and each Fiscal Year thereafter until such amount(s) shall be offset in full. In no event shall Operator or Owner have any liability for any negative difference between Gross Receipts from Merchandise Operations and Merchandise Expenses for any such Fiscal Year, the risk of any such deficiency being solely that of Contractor.

“Merchandise Sales Fee” shall mean, for any Month during the Term (or any portion hereof), an amount equal to fifty percent (50%) of the Merchandise Profits derived from the Merchandise Operations for such Month.

“Minority Participation Goals” shall have the meaning set forth in Section 4.1(m).

“Mobile Stands” shall mean portable stands, carts, bars or kiosks used for the sale of Refreshments or Merchandise.

“Month” shall mean any calendar month unless otherwise specifically stated.

“NHL” shall mean the National Hockey League or any successor league.

“NHL Home Games” shall mean any NHL game between the Team and another NHL team for which the Team is the home team responsible for providing the playing site pursuant to applicable NHL rules and regulations.

“Operator” shall mean Powers Management, LLC, a Tennessee limited liability company, its successors or assigns, including, but not limited to, the Owner, to the extent a third party operator is not engaged by the Owner following the expiration or termination of the Facility Contract.

“Operator Event of Default” shall mean those certain events of default by Operator more particularly set forth in Section 8.1.

“Other Beneficiaries” shall mean the Owner, each partner of Operator (and their respective owners) and their respective officials, officers, agents and employees.

“Outside Catering” shall mean the preparation and sale of Refreshments by Contractor (or any Affiliate of Contractor) to the Outside Catering Area utilizing the Food Service Equipment and Food Concession Facilities for which Contractor has obtained the prior written approval of Operator, which approval may be withheld in Operator's sole discretion. Prior to the acceptance by Contractor of any opportunity to provide Outside Catering, Contractor shall furnish written notice of each such Outside Catering opportunity and reasonable details thereof, including copies of any proposed function sheet(s) and contract(s) for such opportunity to Operator. Operator shall approve or disapprove of such engagement of Contractor for Outside Catering within a reasonable period. In no event shall Operator or the Other Beneficiaries assume any risk or liability for the operation by Contractor of Outside Catering or any costs, liabilities, claims, demands, losses or damages (of whatever kind) incurred (directly or indirectly) in connection therewith. Contractor fully assumes any and all such risks and shall indemnify and hold Operator and the Other Beneficiaries fully harmless therefrom.

“Outside Catering Area” shall mean anywhere outside of the Facility.

“Outside Catering Sales” for any event shall mean all Gross Receipts for Outside Catering for such event.

“Owner” shall mean, The Sports Authority of the Metropolitan Government of Nashville and Davidson County, Tennessee (or any successor in interest to the ownership of the Facility).

“Permitted Transfer” shall have the meaning set forth in Section 9.1.

“Person” shall mean any individual, corporation, partnership, association, trust or other entity whatsoever.

“POS Equipment” shall mean point of sale equipment and systems, registers, cash drawers and related computer hardware, peripherals and software.

“POS System” shall have the meaning set forth in Section 3.4

“Public Event” shall mean any Catered Event or Concession Event scheduled by the Operator in which the Facility is open to the general public.

“Quality Arena Standards” shall mean the standard of quality or performance accepted by a majority of those arenas that serve as (or are capable of serving as) the home facility for NHL teams and which arenas are of a similar age, design and ambiance to that of the Facility, including by way of example, and without limitation, Nationwide Arena, Scottrade Center, Excel Energy Center, RBC Center, TD Garden, St. Pete Times Forum and HSBC Arena, Buffalo, New York, to the extent that the Facility and its Service Areas are constructed, equipped, furnished and maintained in a manner comparable to those arenas which serve as the basis for establishing the standard contemplated hereby.

“Refreshments” shall mean all refreshments, confections, food, beverages (including alcoholic beverages to the extent permitted by this Agreement and Legal Requirements, now or hereafter in effect), snacks, condiments and all other food products and such other consumable items which are provided by Contractor in connection with the Services.

“Reserve Fund” shall have the meaning set forth in Section 3.8.

“Restaurant and Catering Sales” shall mean for any Fiscal Year (or portion thereof), the aggregate amount of Gross Receipts for such Fiscal Year (or portion thereof) allocable to the sale of Refreshments in the Team Club in the Facility, and the sale of Refreshments pursuant to Catering Services provided for any Catered Event.

“Restaurant and Catering Services” shall mean the Restaurant Services and the Catering Services.

“Restaurant Services” shall mean the preparation and sale of Refreshments from the Team Club.

“Sales Concession” shall mean the rights and privileges granted to Contractor in Section 2.1 of this Agreement, subject to the exclusions and reservations set forth in this Agreement.

“Sales Fee” shall mean the consideration paid by Contractor to Operator and Team for the Sales Concession, as more particularly set forth in Section 3.1.

“Service Areas” shall mean the Food and Concession Facilities and the Merchandise Facilities.

“Service Equipment” shall mean the Food Service Equipment and the Merchandise Equipment.

“Services” shall mean the Catering Services, the Outside Catering Services, the Concession Services, the Club Seating Services, Suite Services, Restaurant Services and the Merchandise Operations provided by Contractor hereunder.

“Smallwares” shall mean all kitchen utensils, pots, pans and service pieces necessary to operate the Sales Concession hereunder. All cutlery, cups and plates will be disposable unless the parties hereto mutual agree otherwise.

“Suite(s)” shall mean those luxury suites, executive suites, sky boxes and/or super suites constructed from time to time in the Facility.

“Suite Services” shall mean the sale of Refreshments to the Suites.

“Suspension Notice” shall have the meaning set forth in Section 4.2(t)(ii).

“Team” shall mean Nashville Hockey Club Limited Partnership, d/b/a the Nashville Predators NHL franchise for the playing of NHL Home Games in Nashville, Tennessee, and the corresponding NHL professional sports organization therefor, including the contracts with individual professional hockey players, coaches and management and every property and asset of such NHL franchise.

“Team Club” shall mean that certain restaurant/club area as identified in the Original Concession Agreement. (The Patron Platinum Club at the time of the execution of this Agreement).

“Term” shall have the meaning set forth in Section 6.1.

“Termination Notice” shall have the meaning set forth in Section 4.2(f)(iii).

“Termination Payment” shall have the meaning set forth in Section 3.7.

“Unaffiliated Person” shall mean any Person which, as of the Commencement Date, does not control or is not controlled, directly or indirectly, by the Directing Person.

“Utility Systems” shall mean all heating, ventilation and air-conditioning, electrical (including, if applicable, any fiber optics, if any, installed for telecommunications or security), water, sewer, gas, plumbing and general lighting, sprinkler and fire safety, telephone and telecommunications facilities, duct work, conduit, wiring, outlets, panel boxes, connections and mechanicals (as applicable) and all elevators and escalators.

**1.2 Other Defined Terms.** Other defined terms used in this Agreement shall

have the meanings ascribed to such terms as set forth in this Agreement.

## ARTICLE II

### THE SALES CONCESSION

**2.1     The Sales Concession.** Subject to the terms and conditions set forth in this Agreement, Operator, acting on behalf of Owner, with the express approval of the Team (as required by that certain License and Use Agreement dated July 1, 2007, by and between the Sports Authority and the Team), hereby grants to Contractor throughout the Term the following:

(a)     The exclusive right and privilege to use and occupy the Service Areas, and the non-exclusive right of access thereto for purposes of providing the Services hereunder.

(b)     The exclusive right and privilege to use the Service Equipment for purposes of providing the Services hereunder.

(c)     The right and privilege to provide Catering Services on an exclusive basis throughout the Facility, except with respect to the Excluded Areas

(d)     The exclusive right and privilege to provide Concession Services, Club Seating Services, Suite Services and Restaurant Services at the Facility, except with respect to the Excluded Areas.

(e)     The exclusive right and privilege to sell Pro Sports Merchandise at the Facility , except with respect to the Excluded Areas.Pro Sports Merchandise shall only be sold from the Merchandise Locations.

(f)     The non-exclusive right and privilege to sell Other Merchandise at the Facility, except with respect to the Excluded Areas. Other Merchandise shall only be sold from the Merchandise Locations.

(g)     The exclusive right and privilege to use the Service Equipment and the Service Areas for the provision of Outside Catering.

(h)     The non-exclusive right and privilege to use the Common Areas, to the extent necessary to provide the Services.

Any portion of items (a) through (h) above which Contractor proposes to provide via subcontracted service must be approved by the Operator.

## **2.2 Operator's Reservation.**

(a) Notwithstanding the foregoing there is hereby reserved to Operator the right to allow event holders at the Facility to: (i) bring their own light refreshments (beverages and finger foods) for consumption at the Facility; (ii) provide backstage catering for events at the Facility; (iii) prepare and serve, at no charge, food items as part of a food show, exhibit or conference at the Facility; (iv) sell or allow the sale (through third-party vendors) of cotton candy and snow cones at all circus, ice show and similar multi-performance family shows which items Contractor shall not sell at such events; (v) sell or allow the sale (through third-party vendors) of ethnic foods that are not normally sold by Contractor and not readily obtainable by Contractor as part of the Sales Concession during community, regional, national and international festivals held, if at all, from time to time, at the Facility; and (vi) sell or allow the sale of Merchandise at single performance or multi-performance events such as concerts, amateur athletic contests or professional sports exhibition contests and in such event, Operator shall have the right to cause Contractor to close the Merchandise Locations during such events, and (vii) allow donated food and beverages (alcoholic and non-alcoholic) for charitable events held in the Facility.

(b) Contractor agrees that it will only use the Facility in connection with the exercise of the rights granted to Contractor under the Sales Concession and to perform its obligations under this Agreement.

(c) Notwithstanding the rights set above, it is expressly agreed that there is hereby reserved to Operator the right to limit at any time and from time to time the sale of alcoholic beverages at the Facility during any Concession Event or Catered Event in its reasonable discretion taking into account the type of event and whether the sale of alcoholic beverages is customary or appropriate for such event. It is expressly agreed that such right shall extend to, and include the right to limit the type (but not the brands) of alcoholic beverages sold, the locations where such alcoholic beverages are sold, the per-person per-sale quantity of alcoholic beverages sold and the times during which such beverages may be sold and may include a complete prohibition on the sale of alcoholic beverages at any Catered Event or Concession Event. In addition, it is expressly agreed that Operator reserves the right, in the exercise of its reasonable discretion and without any assumption of liability, to approve Contractor's procedures or to require Contractor to implement any procedure specified by Operator for determining and/or verifying the legal drinking age of patrons of the Facility who consume alcoholic beverages provided that Operator provides Contractor with appropriate prior notification.

(d) Operator reserves to itself, its successors, assignees, and licensees, all rights, duties and benefits of the management, occupancy, operation and exploitation of the Facility not granted to the Contractor as part of the Sales Concession, including, without limitation, all advertising rights in, to or about the Facility; all parking rights; the use of all space leased to third parties for all businesses that do not conflict with the exclusive rights granted herein; and all other rights of Operator under the Facility Contract not expressly granted to Contractor herein. In addition, without limiting the rights of Operator pursuant to Section 2.2(a), in the event that Operator or Owner has the opportunity to license the use of the Facility for unique events including, without limitation, events such as NCAA tournaments/playoffs, other

amateur collegiate or professional league playoffs or other special events, exhibition, sporting or unique national or international events such as Olympic competitions, political conventions/rallies and festivals, then, in such event, the parties agree to fully cooperate with each other in entering into any special modifications or amendments (so long as the terms thereof are fair and equitable to the parties) to this Agreement which may be required by Operator as an inducement to obtain such event for the Facility, Contractor and Operator each recognizing that such inducements may be necessary and in the best interests of Owner and the Facility in order to provide such events to the patrons of the Facility.

(e) Notwithstanding the foregoing, Operator warrants, represents and agrees that, except for Operator's reservation in this Section 2.2 and as elsewhere expressly excepted and reserved to Operator under the provisions of this Agreement, the rights to the Sales Concession have not been and will not be granted by Operator to any other party or exercised by Operator or Owner and that, for the Term, for so long as no Contractor Event of Default exists hereunder only Contractor shall, pursuant to the terms and provisions of this Agreement, have, hold and enjoy each and all the rights and privileges granted to the Contractor herein.

### ARTICLE III

#### SALES FEE; CAPITAL INVESTMENT ALLOWANCE

**3.1 Sales Fee.** In consideration for the rights granted herein, Contractor will pay to Operator, without notice or demand, the following amounts:

(a) With respect to Contractor's provision of the Concession Services:

(i) Thirty-eight percent (38%) of the first Five Million Dollars (\$5,000,000.00) of Concession Sales derived in any Fiscal Year (or portion thereof); and

(ii) Forty percent (40%) of all Concession Sales from Five Million Dollars and One Cent (\$5,000,00.01) to Six Million Five Hundred Thousand Dollars (\$6,500,000.00) derived in any Fiscal Year (or portion thereof); and

(iii) Forty-five percent (45%) of all Concession Sales from Six Million Five Hundred Thousand Dollars and One Cent (\$6,500,00.01) to Seven Million Five Hundred Thousand Dollars (\$7,500,000) derived in any Fiscal Year (or portion thereof); and

(iv) Fifty percent (50%) of all Concession Sales from Seven Million Five Hundred Thousand Dollars and One Cent (\$7,500,00.01) to Eight Million Dollars (\$8,000,000) derived in any Fiscal Year (or any portion thereof); and

(v) Fifty-two Percent (52%) of all Concession Sales above Eight Million Dollars (\$8,000,000) derived in any Fiscal Year (or any portion thereof).

(b) Fifteen percent (15%) of the Restaurant and Catering Sales derived in any Fiscal Year (or portion thereof).

(c) Twenty-five percent (25%) of the Suite Sales derived in any Fiscal Year (or portion thereof).

(d) Twenty percent (20%) of the first Seven Hundred and Fifty Thousand Dollars (\$750,000) of Club Seating Sales derived in any Fiscal Year (or any portion thereof).

(e) Twenty-five percent (25%) of all Club Seating Sales in excess of Seven Hundred Fifty Thousand Dollars (\$750,000) derived in any Fiscal Year (or any portion thereof).

(f) The Merchandise Sales Fee.

(g) A percentage of the Outside Catering Sales derived from any event at which Contractor provides Outside Catering at a rate agreed upon in conjunction with Operator's approval of such event.

(h) If through no fault of its own, Contractor is unable, either due to the nature of the possessory interest in the Service Areas granted Contractor hereunder or due to the nature of the Facility, to obtain or maintain its beer permit or liquor license for any period of time during the Term, Operator and Contractor agree to negotiate in good faith and with reasonable diligence a downward adjustment of the Sales Fees for any such period during which Contractor is unable to sell alcoholic beverages. Such adjustment shall be based upon a projected reduction in Gross Receipts and an overall increase in Contractor's costs of products, if any, taking into account actual sales and costs of such alcoholic beverages from the Facility (if available) and, to the extent actual sales are not available, sales at comparable facilities consistent with the Quality Arena Standards. In the event that Contractor's inability to obtain or maintain its beer permit or liquor license is due to the nature of the possessory interest in the Service Areas granted Contractor hereunder, Operator shall amend or modify this Agreement so as to provide Contractor a leasehold interest or other similar interest in those portions of the Service Areas necessarily required, and to the extent so required, in order to permit Contractor to obtain and/or maintain such beer permit or liquor license. Subject to the terms of Section 9.24 hereof, in the event that Contractor's inability to obtain or maintain its beer permit or liquor license is due to the characterization of the Facility for the purposes of obtaining a beer permit or liquor license, Contractor and Operator shall each use their good faith efforts to effect any necessary changes in any Legal Requirements to alter the characterization of the Facility under such Legal Requirements so as to permit Contractor to obtain such beer permit or liquor license.

(i) Contractor shall keep and maintain on a current basis at the Facility in accordance with generally accepted accounting practices consistently applied, and satisfactory to Operator, complete and accurate records and detailed books of account as well as a computer based record keeping system with respect to the exercise by it of the Sales Concession and the rendering of Services by it as provided in this Agreement. Such records and books of account shall include, without limitation, all tickets, sales slips, cash register tapes and records relating to the rendering of the Services by Contractor as provided for in this Agreement. Operator and its



agents and employees (when authorized by Operator) shall at all reasonable times have access to and the right to examine, reproduce or make extracts from all such records and books of account and computer based record keeping system. All records for any Month shall be retained by the Contractor at the Facility for a period of two (2) years from the end of such Month.

3.2 **Method of Payment.** Not later than the end of the second (2nd) business day after each Catered Event or Concession Event, Contractor shall deliver to Operator a preliminary report of its sales at such event; and, on or before the twentieth (20th) day of the Month immediately succeeding any Month during which Services are rendered by Contractor as provided in this Agreement, Contractor shall deliver to Operator a complete and accurate statement in reasonable detail showing the Gross Receipts for such Month on an event by event basis and the Sales Fee payable by Contractor to Operator as a result of the rendering of such Services during such Month, which sums shall be paid contemporaneously therewith to Operator. All of the reports required pursuant to this Section 3.2 shall be in a form acceptable to the Operator in its sole discretion. Upon reasonable advance notice, Operator shall have the right to obtain copies of the daily receipts, daily bank deposits and information concerning the Catered Events and Concession Events served, the number of meals served at each Catered Event, the total food sales at each Concession Event, beverage receipts from all Catered Events and Concession Events, Merchandise Expenses, Gross Receipts from Merchandise Operations and Merchandise Profits, any amounts uncollected from each event, and any other reasonable pertinent information the Operator may require. The acceptance by Operator of any payment made by Contractor to Operator as provided in this Section, the passage of time, the failure of Operator to act or any other event or circumstance shall not be deemed a waiver by Operator of its rights to question or dispute the accuracy or correctness of the statement with respect to which such payment was made and to demand or receive any additional amounts to which it is entitled if any inaccuracy or incorrectness of such statement is determined or discovered. Contractor shall also deliver to Operator such other reasonable reports, from time to time, relating to the Sales Concession as Operator may reasonably request. Within sixty (60) days after the end of each Fiscal Year, Contractor shall submit to Operator the following;

(a) A report of all Gross Receipts for the prior Fiscal Year broken down into the following categories: Concession Sales, Restaurant and Catering Sales, Club Seating Sales and Suite Sales, certified by an independent certified public accountant; and

(b) An annual operating profit and loss statement covering the Merchandise Operations and a report of all Gross Receipts from Merchandise Operations, Merchandise Expenses and Merchandise Profits, certified by the chief financial officer of Contractor.

(c) Results from Guestpath reviews.

(d) Summary of Board of Health or similar agency inspections.

(e) Any notices received from governing bodies, including but not limited to state or local alcoholic beverage commissions, boards of health and human safety, building codes, labor boards and the like.

In the event that Operator is not satisfied with the statements presented therein. Operator at its expense shall have the right to conduct a special audit of Contractor's books and records related to the Merchandise Operations, Concession Services, Club Seating Services, Suite Services, Restaurant Services and Catering Services by auditors selected by Operator, provided that it does so within twenty-four (24) Months following the receipt of the above-described financial statements. Should such audit or audits uncover a deficiency or deficiencies in payments by Contractor for any period covered, Contractor shall pay to Operator the amount of such payment deficiency within twenty (20) days following receipt of the audit report and interest on the deficiency at the Default Rate from the date on which such amount was originally due and payable until paid. If such payment deficiency is in excess of five percent (5%) of the aggregate amount reported, the entire cost of the audit shall be immediately due and payable by the Contractor.

**3.3 Right of Offset.** Contractor shall have the right to deduct from and offset against any and all Sales Fees payable under Section 3.1 hereof, any Ad Valorem Tax Payment which Contractor is entitled to credit against the Sales Fee under Section 4.1(1) hereof. In addition, the Operator and Contractor acknowledge and agree that the letter agreement dated January 27, 2010 with respect to the bar at location 119 and the FOX Sports Lounge remains in full force and effect. Further, Operator agrees that, if any payment due to Contractor under such letter agreement is not received by Contractor within nineteen (19) days following its due date, Contractor shall have the right to deduct from and offset the amount of such payment against any and all Sales Fees payable under Section 3.1 hereof.

**3.4 Capital Investment** . Contractor will spend a total of One Million Five Hundred Thousand Dollars (\$1,500,000) as follows: (i) for the 2013-2014 Fiscal Year, Contractor will spend Five Hundred Thousand Dollars (\$500,000) for the purchase and installation of Service Equipment and the construction of improvements to the Food Concession Facilities; (ii) for the 2014-2015 Fiscal Year, Contractor will spend Two Hundred Thousand Dollars (\$200,000) for the purchase and installation of Service Equipment and the construction of improvements to the Food Concession Facilities; and (iii) for the 2015-2016 Fiscal Year, Contractor will spend Eight Hundred Thousand Dollars (\$800,000) for the purchase and installation of Service Equipment and the construction of improvements to the Food Concession Facilities. In addition, prior to the start of the 2012-2013 NHL season, Contractor will purchase and install a point of sale system for the Food Concession Facilities and the Merchandise Facilities with capability for value added tickets, as described on Exhibit A attached hereto (the "POS System"). The amounts spent by Contractor under this Section 3.4 shall be referred to as the "Capital Investment". For purposes of calculating the Capital Investment, the amount spent by Contractor for the POS System shall not exceed One Million Dollars (\$1,000,000), regardless of the actual amount spent by Contractor for the POS System. The Contractor and Operator shall mutually agree on the specific items to be purchased or constructed with the Capital Investment .

**3.6 Amortization of Capital Investment** . Amounts spent as part of the Capital Investment shall be amortized on a straight line basis from the date the amount is spent by Contractor through the remainder of the Term.

**3.7 Payment to Contractor Upon Expiration or Termination of this Agreement**. Upon expiration of the Term, or if this Agreement is terminated prior to expiration of the Term for any reason, Operator shall pay to Contractor the sum of the following (collectively, the "Termination Payment"):

- (a) the unamortized balance of the Capital Investment ;
- (b) any invoices that remain unpaid by Operator; and
- (c) the Contractor's cost for its inventories of Merchandise and Refreshments (but, with respect to alcoholic beverages, only such beverages which are then transferable under applicable law).

Upon payment to Contractor of the Termination Payment, Operator shall own free and clear title to all items of personal property or any improvements to the Food Concession Facilities which were purchased with the Capital Investment and Contractor's inventories of Refreshments and Merchandise.

**3.8 Reserve Fund**. Each Month, Contractor shall deposit into a separate account an amount equal to .5% of the Gross Receipts for the prior Month (the "Reserve Fund"). Upon written approval by Operator, amounts on deposit in the Reserve Fund shall be used by Contractor for the purchase of new or replacement Service Equipment or improvements to the Service Areas. Operator shall own free and clear title to any Service Equipment purchased with amounts from the Reserve Fund and any improvements to the Service Areas funded with amounts from the Reserve Fund.

## **ARTICLE IV**

### **PERFORMANCE OF THE SALES CONCESSION**

**4.1 General Standards**. Contractor hereby covenants and agrees that:

(a) Contractor shall perform the Services and exercise its rights under the Sales Concession from the Service Areas which shall only be used for the purpose of providing Catering Services, Concession Services, Restaurant Services, Club Seating Services, Suite Services and Merchandising Operations in accordance with the terms of this Agreement.

(b) Subject to Section 4.11, Contractor shall provide Catering Services, Club Seating Services, Suite Services, Restaurant Services, Concession Services and Merchandise Operations at such times as may be required by Operator to meet clients' requests and Operator needs. Operator shall provide Contractor with advance notice of any such requests. Reasonable efforts shall be made by Operator to notify Contractor of the cancellation of

scheduled events, but Operator assumes no liability for the failure to deliver notice of cancellation. Contractor must provide (i) Concession Services, Club Seating Services, Suite Services, Restaurant Services and Merchandise Operations at all events at the Facility unless Operator agrees in writing to the contrary and (ii) Catering Services to all groups holding an event at the Facility who request such services and pay for such services in advance (or make provision for paying for such services acceptable to Contractor). Contractor shall, at all times, be prepared to cater sufficient meals for a sufficient number of persons at one sitting in the meeting rooms of the Facility and in the entirety of the Facility on reasonable advance notice from Operator.

(c) Contractor shall provide the Services in an efficient manner and at a level of quality, variety and performance equal to or greater than the Quality Arena Standards. All Refreshments provided by Contractor in connection with the performance of the Services shall be of high quality and prepared and presented in a professional manner consistent with the Quality Arena Standards. No imitation, adulterated or misbranded article or items shall be sold or kept for sale and all Refreshments shall be stored and handled by Contractor in a manner consistent with standards of sanitation, preservation and purity, all equal to or greater than Quality Arena Standards and in accordance with Legal Requirements. In conjunction with the operation of the Sales Concession hereunder, and except with respect to alcoholic beverages, Contractor shall sell those Refreshments designated or approved by Operator (which approval may be granted or withheld by Operator in its sole discretion). Provided, if the unit price of any Refreshment item designated by Operator hereunder is greater than the unit price of reasonably comparable items, the designated item shall be deemed to be a Branded Product and the differential in per unit price shall be deemed to be a Branded Product Charge. Furthermore, in addition to the types of food and beverage products typically found at facilities comparable to the Facility, Contractor shall provide such Branded Products, specialty, premium and/or gourmet items and local specialties and “heart healthy” items, as shall be required by Operator. If required by Operator, Contractor shall secure agreements (“Branded Products Agreements”), upon terms acceptable to Operator (in its sole discretion), with suppliers of Branded Products and local specialties for the sale of such products by Contractor at the Facility. Provided, however, any such Branded Products Agreements shall be by their terms expressly subject to and subordinate to this Agreement for all purposes. Operator reserves the right to prohibit the sale of certain products by Contractor if Operator concludes in its reasonable discretion that the quality, price, type or brand of products sold by Contractor does not meet or exceed Quality Arena Standards or in its sole discretion that the sale of such product by Contractor would not be in the best interests of the Facility. Title to all Refreshments shall remain vested in Contractor. Any Branded Products Charges shall be deducted from the Sales Fee described in Section 3.1. In exercising its rights and obligations under this Section, Operator will confer with the Team with respect to the quality standards required hereunder and the food and beverage items which may be offered pursuant hereto, and shall make reasonable commercial efforts to accommodate any suggestions made by the Team with respect to such standards and items (“Suggested Changes”) provided that such Suggested Changes meet or exceed the Quality Arena Standards.

(d) Except for those items, if any, expressly required by this Agreement to be provided by Owner, Contractor shall furnish all working capital, food,

beverages, Merchandise, services, inventory, personnel, materials, machinery, equipment and other items necessary to perform Contractor's obligations under this Agreement.

(e) Contractor shall be available at the Facility as needed to meet and work with users of the Facility to meet their individual catering needs. Contractor understands and acknowledges that, due to the nature of the catering and concession business, it will be necessary for Contractor to make itself available to meet with users and potential users of the Facility to plan Catering Services, Club Seating Services, Suite Services, Concession Services, Restaurant Services and Merchandise Operations at such user's events. Contractor hereby agrees that it will attend any such meeting with a potential user of the Facility upon Operator's request for Contractor to attend such a meeting.

(f) Subject to the Service Areas being in compliance with all applicable Legal Requirements to enable Contractor to obtain its permits and licenses, Contractor shall, at its own cost and expense, obtain such licenses, permits and franchises from any Governmental Authority that are required under the Legal Requirements and as may be required to enable Contractor to fully and lawfully exercise the Sales Concession and to fulfill all its obligations hereunder, including, without limitation, all licenses, permits and franchises required to enable it to prepare and sell Refreshments, including (to the extent obtainable in accordance with Legal Requirements) beer, ale, alcoholic liquors and wines in the Facility. Owner and Operator shall be required to reasonably cooperate with Contractor in connection with Contractor's filing of applications for, and securing and maintaining in good standing, any and all licenses and permits and renewals thereof reasonably needed by Contractor to fulfill its obligations hereunder, so long as the cost and expense thereof shall be borne by Contractor.

(g) Contractor will comply with all Legal Requirements applicable to the performance of the Services and the exercise of its rights under the Sales Concessions. Contractor shall be responsible for any violations of Legal Requirements in the Facility which occur during the Term of this Agreement as a result of Contractor's operation hereunder. Owner and Operator hereby grant to Contractor any and all authority required of Contractor by any applicable Legal Requirements to permit Contractor to obtain and maintain the beer permit or liquor license for the Facility. Contractor shall promptly advise Operator in writing of any pending or threatened actions against it by any Governmental Authority, which seek, or could result in the suspension or revocation of any license or permit necessary for its performance under this Agreement, or of any event which could result in Contractor's failure to obtain or maintain its beer permit or liquor license other than is contemplated under Section 3.1(f). In the event of any suspension in excess of two (2) event days or revocation of Contractor's license to serve alcoholic beverages, and if such suspension or revocation or failure to obtain shall not be stayed or appealed in such manner that will permit Contractor to continue to serve alcoholic beverages at the Facility, then Contractor shall be obligated, subject to the prior written approval of Operator, to secure an interim licensed bar operator at the Facility to enable or permit the serving of alcoholic beverages. If Contractor has not secured an interim licensed bar operator or made other arrangements as provided above, then upon the effectiveness of the suspension or revocation of Contractor's liquor license or beer permit, Operator, without waiving any rights which it may otherwise have hereunder, shall have the right, but not the obligation, to secure an interim licensed bar operator. In such event. Contractor will make available to the interim licensed bar operator, to the extent permitted by Legal Requirements, if any, all supplies of applicable beverages then in its possession which were intended for sale or use at the Facility and

will make applicable personnel and the Service Areas and Service Equipment available to such interim licensed bar operator. Operator shall cause any interim bar operator to: (i) agree to indemnify Contractor from and against any and all loss, damage or liability that Contractor incurs directly as a result of the interim bar operator's operation in the Facility; and (ii) procure and maintain public liability and property damaged insurance with a single combined limit of at least One Million Dollars (\$1,000,000.00) for bodily injury, death and property damage, which insurance shall name Contractor as an additional insured. Contractor shall be entitled to reimbursement, at its actual cost, for all Refreshments furnished to and usable by such interim licensed bar operator and for its costs and expenses actually and necessarily incurred in rendering the assistance and cooperation contemplated by the foregoing. Similarly, Operator shall be entitled to reimbursement for all costs incurred by Operator in securing an interim licensed bar operator. Sales of the interim licensed bar operator shall be excluded from Gross Receipts hereunder and shall belong solely to Operator without accountability to Contractor. Contractor shall immediately resume the sale of alcoholic beverages at the Facility upon restoration of the licenses or permits to do so.

(h) Contractor shall conform to all rules and regulations at any time promulgated by Operator with respect to the Facility, cause its officers, employees, agents, independent contractors, and invitees at all times to abide by and conform to those rules and regulations which Operator may at any time affix and establish for the conduct of Contractor's employees; provided that in no event shall such rules and regulations be in contravention of any applicable Legal Requirements or the terms and conditions of this Agreement. Operator agrees that any rules and regulations promulgated for the Facility shall be applied uniformly with respect to Contractor and other users and vendors of the Facility and, absent extenuating circumstances, shall not be amended without notice if such amendment would have a material adverse impact on such parties in terms of substantial costs that would not otherwise have been incurred by the parties but for such amendment.

(i) Contractor shall keep complete and accurate inventory control records before and after each event as well as sales reports for each event held at the Facility. Contractor shall not permit any of its personnel (with the exception of hawkers and moving vendors, or concession stands where registers are not used) to make change from open cash registers, boxes, containers, or from pockets of clothing or other similar receptacles, to the extent registers are provided to Contractor.

(j) Contractor shall perform its obligations under this Agreement and shall conduct the management and operation of the Sales Concession at all times with integrity and good faith and in a manner that is in the best interest of the Facility and Operator and consistent with the terms of this Agreement. The scope of such duty specifically includes, without limitation, the duty to use commercially reasonable efforts to maximize Gross Receipts and to operate its sales outlets consistent with the expected level of attendance at the Facility for various events at the Facility, and to maintain the quality, variety and performance of Contractor's Services at a level commensurate with the Quality Arena Standards.

(k) Contractor shall reimburse Operator on a monthly basis, within five (5) business days of Contractor's receipt of Operator's invoice, for Contractor's prorated share of all pest control, telephone and other usual and customary shared costs or expenses incurred by

Operator based on Operator's actual costs of providing such services to Contractor. Operator's pest control program for the Facility shall be coordinated with Contractor to ensure mutually acceptable scheduling of pest control services.

(l) In the event that any Governmental Authority assesses, levies or imposes any Imposition related to Contractor's operation of the Sales Concession hereunder, Contractor shall be solely liable for and shall (except as otherwise provided in this Agreement) pay, prior to any delinquency, any such Impositions in full and such payment (other than any Ad Valorem Tax Payment) shall not be credited against the Sales Fee or any other amount provided to be paid by Contractor hereunder. Any Ad Valorem Tax Payment shall be credited against the Sales Fee, if and when paid. Contractor, in addition to its payment of Impositions, shall be solely responsible for punctually filing any and all federal, state and local tax returns to be filed by Contractor and agrees to comply with any Governmental Authority's licensing, withholding, or restrictive regulations regarding the payment of such Impositions.

(m) Contractor in performing its obligations hereunder shall use diligent good faith efforts to achieve the minority participation goals established by Operator and Owner and set forth on the Fair Employment Practice Statement attached hereto as Exhibit "E" and incorporated herein (the "Minority Participation Goals"), which generally reflect Operator's and Owner's desire to obtain as a goal a minimum of twenty percent (20%) combined participation of minorities and women in all levels of employment at the Facility and all purchases of goods and services related to the Facility. In such connection, Contractor shall provide an annual report to Operator within fifteen (15) days from the end of each Fiscal Year and in a format reasonably acceptable to Operator which annual report shall set forth Contractor's efforts with regard to achieving the Minority Participation Goals for the immediately preceding Fiscal Year.

(n) Contractor shall repair and maintain the Service Equipment in good order and condition throughout the Term, subject to ordinary wear and tear. Contractor's costs and expenses related to such repair and maintenance shall not be credited against the Sales Fee or any other amount provided to be paid by Contractor hereunder. Contractor shall keep accurate records of all repair and maintenance to the Service Equipment.

(o) Contractor shall utilize the Facility's loading dock and dock well in a clean, sanitary fashion in order to minimize rodent infestation.

(p) Contractor acknowledges and agrees that it shall have no rights with respect to the Facility other than those expressly granted under this Agreement.

(q) Contractor shall not enter into any contract with any Affiliate of Contractor or any other Person in which Contractor or its Affiliates has an ownership interest for the provision of goods and services on terms which are less favorable to Contractor than that which Contractor could obtain on an arm's-length basis from an independent third Person, as measured by the costs for similar goods or services from other Persons in Nashville, Tennessee, or other Persons in comparable cities.

**4.2 Personnel.** Contractor shall at all times comply with the following

requirement regarding its personnel at, and staffing of, the Facility:

(a) Contractor shall employ, train and supervise personnel with appropriate qualifications and experience and in sufficient numbers to provide all services required under this Agreement. The Contractor shall advise and instruct temporary personnel to enter upon and remain on the Facility's premises only during events at the Facility and for a reasonable time prior to and subsequent to events, and only for the purpose of exercising during events, the rights and privileges herein provided. For all Catered Events, the number of individuals employed by Contractor to staff such event shall be sufficient to timely prepare and serve the main course of the catered meal to the entirety of the group attending such event within an appropriate time frame. For any Concession Event, Contractor shall supply sufficient personnel to staff such event in a manner equal to or exceeding the Quality Arena Standards. All persons engaged by Contractor in connection with the performance of the Services and the exercise of Contractor's rights under the Sales Concession shall be the employees or agents of Contractor and shall be paid by Contractor. Contractor shall pay all applicable social security, unemployment, workers' compensation and other employment taxes related to such personnel.

(b) Contractor shall employ at the Facility only trained, neatly uniformed, clean and courteous personnel. When at the Facility, all of Contractor's personnel shall wear appropriate and well-maintained uniforms, which uniforms may, pursuant to Operator's rules and regulations for the operation of the Facility, vary in design according to the principal location of Contractor's intended use of any such employee, subject to Operator's approval and which uniforms shall bear the name and logo of the Facility and such identifying marks as Operator shall designate. Such uniforms shall be provided by Contractor at its sole cost and expense. Contractor's employees shall conduct themselves at all times in a proper and respectful manner and in accordance with Operator's rules and regulations for the Facility. If Operator reasonably determines that any employee of Contractor has not complied with the provisions of this Section on repeated instances or in any material respect, Operator may request Contractor to exclude the employee or employees from the Facility so long as such exclusion is not in contravention of any applicable Legal Requirement. Upon such request by Operator, Contractor shall immediately remove the employee from the Facility.

(c) Contractor shall provide, subject to Operator's prior written approval, a competent management staff, including, without limitation, a designated representative or representatives who shall be (i) directly responsible for the oversight of Contractor's obligations hereunder, (ii) available to take calls from and meet with Operator at all times during regular business hours; and (iii) authorized to act on behalf of, and contractually bind, Contractor. If Operator, with or without cause, requests a change in management personnel, Contractor shall have twenty (20) days to provide an appropriate replacement on a temporary basis and a permanent replacement within an additional forty (40) days thereafter. Contractor's manager or his designated representative shall be available at the Facility whenever Contractor is providing the Services and shall be authorized by Contractor to be served with complaints and notices by Operator.

(d) Operator shall admit free of cost to the Facility such officers and employees of Contractor as may be necessary to operate, and for the purposes of operating, the Sales Concession at any event. Operator shall permit only appropriately credentialed employees and other personnel of Contractor to be permitted in the Facility without the payment of an admission fee. Operator shall supply to Contractor, at Contractor's sole cost and expense but at Operator's actual cost, a limited number of badges, in form and design selected by Operator, for



such admission. At least six (6) hours before any Catered Event or Concession Event, Contractor shall submit to Operator a list of the names of Contractor's employees and personnel scheduled to work such event. Contractor shall not include on the list any person that Operator has required Contractor to expel or exclude from the Facility. Operator shall deliver the credentials to Contractor at least two (2) hours before the event. Any badges delivered pursuant to the terms hereof shall remain the property of Operator and shall be returned to Operator immediately after the event. Operator may, however, deliver to Contractor's management staff badges that may be retained indefinitely until revoked by Operator.

(e) Contractor shall not discriminate against any employee or applicant for employment because of age, race, creed, sex, color, national origin and/or disability.

(f) If a picket or pickets appear on any public or private street or sidewalk upon which the Facility abuts with respect to an alleged labor dispute involving the employees of Contractor or any Affiliate thereof, whether relating to the furnishing by Contractor of the Services as provided in this Agreement or any other business or activity of Contractor or any subsidiary or Affiliate thereof:

(i) Contractor shall take immediate steps to settle or otherwise dispose of said labor dispute and to effect removal of said picket or pickets by any and all lawful means. Contractor shall further take any necessary legal measures, including obtaining injunctive relief where reasonably appropriate, to prevent such labor dispute from interfering with the efficient operation of the Sales Concession by Contractor. In the event of any such labor dispute, Operator shall designate, and at its election may redesignate, one (1) particular entrance to the Facility at which all employees of Contractor shall be required to gain ingress or egress to the Facility;

(ii) If said picket or pickets are not withdrawn within ninety-six (96) hours of Contractor's receipt of written notice from Operator of the appearance of said pickets on said street or sidewalk and Contractor's operations hereunder are, in Operator's judgment, substantially impaired as a result thereof or the pickets interfere in any material respect with the proper conduct of the Sales Concession or with the normal operation of the Facility, Contractor shall, at the written request of Operator (the "Suspension Notice") suspend its operations at the Facility and the performance of the Sales Concession hereunder by Contractor, and during such suspension of operations, Contractor shall continue efforts to settle or otherwise dispose of said dispute or controversy and to effect the removal of said picket or pickets;

(iii) If said picket or pickets are not withdrawn within thirty (30) days after the date of receipt by Contractor of such Suspension Notice and Operator determines that the proper conduct of Contractor's operations hereunder would continue to be substantially impaired as a result thereof if it were to resume operations hereunder or the pickets continue to interfere in any material respect with the normal operation of the Facility, Operator shall have the right to terminate this Agreement and any other rights of Contractor under this Agreement by giving written notice (the "Termination Notice") to Contractor, and in such event, the Sales Concession and all rights of Contractor hereunder shall immediately terminate

provided, however, that such termination shall not discharge any accrued or unfulfilled obligations of either party hereunder, which obligations shall promptly be discharged. Contractor shall, however, have the right to resume the Sales Concession and such other rights shall be reinstated provided that:

(A) Said picketing shall have completely ceased and said dispute or controversy shall have been settled or otherwise disposed of such that the proper conduct of Contractor's operations cease to be substantially impaired prior to or within thirty (30) days after the date said Termination Notice is given to Contractor by Operator; and

(B) Written notice for such reinstatement shall have been received by Operator within five (5) days after the date of cessation of such picketing and of the settlement of said dispute or controversy.

In the event this Agreement has not been reinstated pursuant to the foregoing within the time periods hereinabove provided, this Agreement shall then be deemed terminated.

(iv) During any such suspension of operations or termination of the Sales Concession and other rights of Contractor hereunder as provided above, Operator shall have the right at any time to make whatever arrangements that it in its sole discretion deems necessary or suitable to continue or provide for the continuance of the operation of the Sales Concession independent of Contractor. In such connection, any proceeds or receipts derived from such operation by Operator (or its designee) for such period of suspension shall belong solely to Operator without any accountability to Contractor therefor.

(g) Contractor shall conduct, either itself or, when required, by Operator in coordination with Operator, regularly scheduled training sessions, subject to Operator's reasonable approval, of all personnel employed by Contractor at the Facility in the following areas:

- Procedures;
- (i) Facility Orientation, Rules and Regulations and Emergency
  - (ii) First Aid;
  - (iii) Customer Service;
  - (iv) Alcohol Awareness;
  - (v) Emergency Procedures;
  - (vi) Safety; and
  - (vii) Health and Sanitation Practices.

Similarly, Contractor will permit Operator, its employees and others providing services to Operator at the Facility to participate in any such sessions organized by Contractor.

#### 4.3 Event Duties.

(a) With respect to any Catered Event, Contractor and Operator agree as follows:

(i) Contractor will provide the Facility with final table and chair requirements for any Catered Event at least seven (7) business days prior to the commencement of the Catered Event. Operator and Contractor will cooperate in the coordination of available equipment for Catered Events on a first come, first served basis. To the extent that sufficient inventory exists which is not committed to other events at the Facility, the Operator shall deliver all tables and chairs necessary for such Catered Event to the room where such Catered Event is to be held within sufficient advance time reasonably necessary for such Catered Event as may be reasonably necessary to fully set up for such Catered Event. To the extent that Operator's inventory of tables and chairs which are not committed to other events at the Facility is not sufficient to meet Contractor's needs for any Catered Event(s), Contractor shall obtain, at user's cost, through an equipment rental service acceptable to Operator, such additional tables and chairs as may be needed for such Catered Event(s). Contractor shall be responsible for setting up the tables and chairs supplied by such vendors in their place of use and for stacking such chairs and folding tables following the completion of the Catered Event. Contractor shall also be responsible for removing all tables and chairs supplied by it for a Catered Event from the Facility. The stacking of such chairs and folding of such tables, and any required removal thereof by Contractor, shall be completed within four (4) hours of the completion of any Catered Event, unless such period shall be too short to complete such task, in which event such task shall be completed as soon after the completion of the Catered Event as is reasonably possible. Facility tables, chairs and other equipment shall not be used by Contractor for Outside Catering without the prior written consent of Operator and any such use shall be subject to the payment of a reasonable usage fee by Contractor. Any such usage fee shall be in addition to the Sales Fee payable hereunder by Contractor with respect to such Outside Catering. **In no event shall Operator or any of the Other Beneficiaries be liable to the Contractor or any other Person or responsible in any way for any malfunction, defect or lack of fitness for a particular purpose or breach of any express or implied warranty by any Person related to any Facility tables, chairs or other equipment provided by the Operator and utilized by Contractor hereunder, all of which are expressly disclaimed by Operator and the Other Beneficiaries and Operator and the Other Beneficiaries shall be indemnified and held harmless by Contractor with respect thereto. Any Facility tables, chairs or other equipment utilized by Contractor hereunder shall be delivered by Operator on an "AS IS", and "WHERE IS", and "WITH ANY AND ALL FAULTS" basis.**

(ii) During any Catered Event, Contractor shall be responsible for providing the Catering Service to such event in accordance with the terms hereof and shall also provide intermittent bussing of all tables being used in connection with such Catered Event. "Bussing" shall mean removal of place settings for completed portions of a meal and refilling of water glasses, coffee cups and other beverages to be provided at such tables at such Catered Event. Such bussing shall occur in a frequency which meets or exceeds local industry standards.

(iii) Following the completion of a Catered Event, Contractor shall be responsible for complete bussing of all tables used in connection with such Catered Event, cleaning the surfaces of all tables used in connection with such Catered Event and wiping

clean all chairs used in connection with such Catered Event. Contractor shall also be responsible for the cleanup of the Service Areas, the event area, and any immediately surrounding areas upon the completion of any Catered Event to the reasonable satisfaction of Operator. Following any Catered Event, the Contractor shall collect and remove all beverage containers from the portion of the Facility in which such Catered Event took place. Contractor shall also be responsible for the cleaning and storage of all equipment, including Service Equipment, the Smallwares and any other equipment provided by Contractor for such Catered Event, used in connection with any Catered Event. Such cleaning and storage shall be done in accordance with the manufacturer of the equipment's instructions. The floor of the kitchen and all corridors used for the service of food and beverages in connection with any Catered Event shall be swept and mopped to the reasonable satisfaction of Operator. After any Catered Event, all garbage generated from such Catered Event, and Contractor's Catering Service for such Catered Event, shall be removed by Contractor, placed in airtight containers acceptable to Operator, and placed in the area designated for trash storage by the Operator and Owner. Contractor shall keep the Facility's garbage storage area in a neat and clean condition during its use.

(b) With respect to any Concession Event, Contractor and Operator agree as follows:

(i) The Operator will provide the Contractor with proper notice of any event at the Facility for which Concession Services, Club Seating Services, Suite Services and Restaurant Services are required within a reasonable period of time prior to each Concession Event. Operator shall provide Contractor with a copy of the daily sales report and advance booking schedule at its bi-monthly vendor meeting. Contractor shall provide Concession Services, Club Seating Services, Suite Services and Restaurant Services to the Facility on the day of each Concession Event in the portion of the Facility being used for such Concession Event. Contractor and Operator shall participate in regularly scheduled meetings to review the upcoming scheduled events for the Facility and the Concession Services, Club Seating Services, Suite Services and Restaurant Services that are expected for each such Concession Event.

(ii) All Service Areas (including sufficient concession stands) appropriate for operation in connection with any particular Concession Event (taking into account expected attendance levels) shall be open for business at the time the Facility is open for such Concession Event. Contractor agrees that it will not permit any beverages or other articles to be delivered by its employees to customers in the seating area of the Facility in glass bottles, cans, or packages other than paper or plastic cups, packages, bottles or bags, provided, however, that alcoholic and hot beverages may be sold in styrofoam containers if no comparable (economically and otherwise) paper or plastic container is available. Cups used to dispense soft drinks and beer in the Facility shall bear the logo and name of the Facility. In connection with the foregoing, Operator shall provide Contractor camera ready artwork of such logos and name of the Facility. The printing of such cups shall be at Contractor's sole cost and expense. The company logos of Contractor may be advertised on the cups in a manner mutually agreed upon by Operator and Contractor, but no other products, suppliers or other person or entity shall be granted advertising privileges on cups or other food or beverage servicing containers, except as Operator may request. Contractor shall be free to choose the manufacturer and supplier of its cups and other food containers but shall notify Operator of the identities of such manufacturers and suppliers.

(iii) Following the completion of a Concession Event where Contractor has provided Concession Services, Club Seating Services, Suite Services and Restaurant Services, Contractor shall be responsible for cleaning the Service Areas, the Service Equipment and any immediately surrounding areas to the reasonable satisfaction of Operator. Contractor shall collect and remove all beverage containers from the Service Areas used for such Concession Event. The cleaning of any equipment used in connection with any Concession Event shall be done in accordance with the manufacturer of the equipment's instructions. The floor of the Service Areas shall be swept and mopped to the reasonable satisfaction of Operator. After any Concession Event, all garbage generated from such Concession Event, and the Concession Services, Club Seating Services, Suite Services and Restaurant Services provided in connection with such Concession Event, shall be removed by Contractor, placed in airtight containers acceptable to Operator, and placed in the area designated for trash storage by the Operator and Owner. Contractor shall keep the Facility's garbage storage area in a neat and clean condition during its use.

**4.4 Refreshments.** Contractor covenants and agrees that it shall not sell, offer for sale, or permit the sale of any item or product unless the pricing and quality thereof shall have been approved in advance by Operator, which approval shall not unreasonably be withheld. Operator requires that the highest quality of food be served in a pleasing and courteous manner commensurate with returning a reasonable profit to the Facility and Contractor. In order to accomplish these results, Contractor shall:

(a) Submit to Operator on an annual basis as part of its Annual Operating Plan described in Section 4.9, a basic menu and price structure for Catered Events which shall be subject to Operator's prior approval. Pricing shall take into account the type of events, competitive pricing for comparable services in comparable facilities and markets. The basic menu shall provide patrons with sufficient selections to provide patrons who so request it with a complete meal.

(b) In addition to the aforesaid basic menu for Catered Events, the Contractor may add as many additional items as it desires to the Facility's menu. The price of each additional item on the expanded catering menu must be stated but the Contractor shall have the right to add or delete from the menu or to change the prices thereon upon fifteen (15) days prior written notice to the Operator; provided, that Operator has first approved the price and quality thereof.

(c) Contractor shall provide the Operator with a menu card for each selection on the basic or expanded catering menus. Such menu card shall set forth, in detail, the items offered, and the quality and quantity of each item to be served with that menu selection.

(d) The prices set forth on the initial basic catering menu shall be effective for six months after the approval thereof. Thereafter, the Contractor may request Operator's approval to increases in prices set forth on the basic catering menu. However, the foregoing shall not be construed to limit Contractor's right to add additional items or modify selections or offerings to the menu (with Operator's approval) or to restrict the sale of specialty items or pricing concessions made in order to secure catering events from time to time depending on customer demands and market conditions. Operator agrees not to unreasonably delay,

condition or withhold its consent to any request for changes submitted by Contractor. With respect to beverage prices, the Contractor shall submit a list of beverage prices to the Operator consistent with the overall menu pricing plan, as approved by Operator. Said beverage price list may include, at Contractor's option, a service charge consistent with Quality Arena Standards. Such price list and service charge must be approved by Operator as being reasonable in light of the goods and services being provided. Once approved, the beverage price list shall only be increased upon the prior written approval of Operator.

(e) No vending machines shall be placed in the Facility by Contractor unless first approved in writing by Operator. Contractor shall not at any time sell or otherwise distribute (i) any items with adhesive or sticky surfaces, including, but not limited to, bumper stickers, logo stickers or any other peel-and-stick or moisten-and-stick items; (ii) chewing gum; or (iii) tobacco products.

(f) Subject to the necessary Service Equipment or any other necessary equipment being made available to Contractor at the Facility, when requested by Operator, unless prohibited by any Legal Requirements (and then only to the extent so prohibited) Contractor shall sell or offer for sale, in connection with the Concession Services, Club Seating Services, Suite Services and Restaurant and Catering Services, but subject to the provisions of Section 4.1(c) hereof, those particular principal brand or brands of items or products, or those principal products produced by particular producers or manufacturers designated by Operator on a preferred basis with respect to food, beverage items or products. If requested by Operator, Contractor shall, subject to the terms of the Branded Products Agreements, more prominently display the names or symbols of those items or products designated by Operator pursuant to this section. Contractor shall maintain and have readily available for use in the Facility such quantities of Refreshments as are required for the efficient operation of the Concession Services, Club Seating Services, Suite Services, and Restaurant and Catering Services.

(g) Operator shall consult with Contractor at least once every twelve (12) months (and more often if requested by either) to review service levels, venue enhancements, products to be sold and prices to be charged for Refreshments furnished as part of the Concession Services, Club Seating Services, Suite Services and Restaurant Services. Operator will at such time or times consider, but shall not be obligated to approve, a request by Contractor for price changes, menu changes and other changes in the operation of the Concession Services, Club Seating Services, Suite Services and Restaurant Services; provided, however, that Contractor shall have the ability to serve "daily specials". In the event that Contractor desires to offer such "daily special" to patrons, Contractor shall make every reasonable attempt to inform Operator of the same prior to offering that "daily special". In the event that Operator is dissatisfied with the "daily special" offered by Contractor, Operator may inform Contractor of its dissatisfaction with the same, in which event Contractor shall cease serving that "daily special".

(h) Operator desires that local producers of food and beverage products and outside services (including the use of local minority business enterprises) which are part of the operation of the Sales Concession at the Facility and not entirely performed by the Contractor be utilized by Contractor when these products or services are available on competitive terms and with equal quality. Contractor agrees to consider as many local products and supply sources (including local minority business enterprises) as possible and to use as many of these as may be reasonably feasible in its operation, considering the requirements of this

Agreement and Contractor's quality control standards.

**4.5 Cleanliness.** Contractor shall maintain all Service Equipment and the Service Areas in a clean and sanitary condition and in accordance with all Legal Requirements and the Quality Arena Standards and the reasonable rules and regulations of Operator concerning the Facility; provided, however, that Contractor shall have no such obligation with respect to the Common Areas of the Facility, unless such Common Areas are used in a Catered Event. Contractor agrees not to use Hazardous Substances at the Facility except in accordance with all applicable Legal Requirements and agrees to indemnify, defend and hold Operator and the Other Beneficiaries harmless from all losses, costs, damages, liabilities and expenses arising out of its use, generation or storage of Hazardous Substances at the Facility.

**4.6 Charity Services.** If any portion of a meal or beverage price charged by an event holder goes to charity, the Contractor shall require the user to make available to event patrons that fact and the amount of the price being paid to said charity.

**4.7 Smallwares and Other Small Equipment.**

(a) Contractor shall be obligated to provide, at its sole cost and expense, all Smallwares reasonably required to provide the Services.

(b) Contractor shall store the Smallwares at the Facility for use in Contractor's operations at the Facility. Throughout the Term, title to the Smallwares shall remain vested in Contractor. Upon the termination of this Agreement, however such termination may be brought about (including a default by either party hereto), the Smallwares, shall remain the property of Contractor and be promptly removed from the Facility by Contractor. In the event that the Smallwares are not removed by Contractor from the Facility within thirty (30) days of such termination, then Contractor shall be deemed to have abandoned its rights to the Smallwares and title thereto shall immediately vest in the Facility without the payment of any compensation or additional consideration therefor. The Smallwares shall be acquired by Contractor for cash and Contractor hereby agrees that it shall not place, or allow to be placed, any liens, security interests or encumbrances on the Smallwares or any portion thereof. Contractor shall be responsible for the replacement of Smallwares as reasonably required.

(c) Contractor shall be responsible for providing, at its sole cost and expense, its own uniforms, office furniture and equipment, commissary tugger, and portable radios and any other items necessary for the operation of the Sales Concession (collectively, the "Small Equipment"). Throughout the Term, title to the Small Equipment shall remain vested in Contractor. Upon the termination of this Agreement, however such termination may be brought about (including a default by either party hereto), the Small Equipment shall revert to the property of the Operator. The Small Equipment shall be acquired by Contractor for cash and Contractor hereby agrees that it shall not place, or allow to be placed, any liens, security interests or encumbrances on the Small Equipment or any portion thereof. Contractor shall be responsible for the replacement of the Small Equipment as reasonably required.

**4.8 Annual Operating Plan.** Contractor shall cooperate fully with Operator at the Facility in the preparation of an annual business plan for the Facility. No later than

December 1<sup>st</sup> of each Fiscal Year, Contractor will provide Operator with its business plan for the ensuing Fiscal Year. Such plan shall include:

- (a) A projected profit and loss statement for Merchandise Operations;
- (b) Its proposed menus and pricing schedule for Refreshments in the categories of services then being provided at the Facility for the ensuing Fiscal Year; and
- (c) A proposed capital improvement budget for replacements to the Service Equipment and improvements to the Service Areas.

## **ARTICLE V**

### **OBLIGATIONS OF OPERATOR**

#### **5.1     Service Areas and Service Equipment.**

(a) Operator, as agent for Owner, hereby grants Contractor the right to enforce, on a non-exclusive basis, any manufacturer's and/or contractor's guarantee or warranties related to Service Equipment.

(b) Operator, as agent for the Owner, (but without personal liability of Operator to Contractor therefor) covenants to Contractor that it shall, at its sole cost and expense; be responsible for the repair and maintenance of the Facility including but not limited to all Service Areas and all Utility Systems and mechanicals (but excluding the Service Equipment) except for any repair caused by any negligent or willful act or omission of Contractor or anyone acting by, through or under Contractor, the costs and expenses of which shall be paid by Contractor.

(c) Operator, as agent for Owner (but without personal liability to Operator therefor) shall be responsible for the replacement of Service Equipment as is reasonable and customary under the circumstances taking into account the useful life of such equipment, the wear and tear thereon and Contractor's repair and maintenance obligation therefor.



## **5.2     Utilities.**

(a) Operator, as agent for Owner, shall use its reasonable commercial efforts to provide or cause to be provided, at its own cost and expense, all Utility Systems and related utility service before, during and after events at the Facility and reasonably necessary for the operation by Contractor of the Sales Concession and the effective performance by Contractor of its obligations under this Agreement. Water provided hereunder shall be fit for human consumption and Contractor will be furnished with hot water for general purposes at One Hundred Forty Degrees Fahrenheit (140<sup>0</sup> F) and not less than One Hundred Eighty Degrees Fahrenheit (180<sup>0</sup> F) for dishwashing purposes or at such other temperatures as may be required by applicable Legal Requirements. Contractor shall not permit or commit waste of any such Utility Systems and shall cause its officers, agents, employees, servants and contractors to practice prudent conservation thereof. Contractor acknowledges that Operator cannot control the availability of utility service to the Facility at any given time and that in no event shall Operator or Owner ever be liable or responsible to Contractor for any loss, cost, damage, expense, claim or cause of action suffered or incurred by Contractor as a result of or arising from any interruption in the utility service at the Facility, regardless of whether such interruption is caused by the acts or omission of Operator, Owner or others; provided, however, in the case of an interruption in services, Operator and Owner shall use reasonable efforts (but without any liability) to restore the Utility Systems and service related thereto as soon as is reasonably possible, subject, in all events, to Events of Force Majeure.

(b) Operator shall provide to Contractor, at Operator's cost and expense, adequate non-exclusive access to and use of the loading docks at the Facility, for use by Contractor in coordination with Operator and other users of the Facility. Contractor shall not use any public elevators for gaining access to the Facility and no stocking of Service Areas in or on the public areas shall be permitted to Contractor from such elevators.

**5.3     Cancellation of Events.** Operator shall have the sole right in its discretion, to cancel or reschedule any event during the Term or to dismiss the audience for any event so long as such cancellation is not arbitrary or capricious. Contractor shall have no action or claim against Operator in such circumstance.

**5.4     Hazardous Substances.** Operator agrees not to use Hazardous Substances at the Facility except in accordance with all applicable Legal Requirements and agrees to indemnify, defend and hold Contractor harmless from all losses, costs, damages, liabilities and expenses arising out of its use, generation or storage of Hazardous Substances at the Facility.

## **ARTICLE VI**

### **TERM**

## **6.1 Termination of Original Concession Agreement; Term of this Agreement.**

(a) The terms and conditions of the Original Concession Agreement shall remain in full force and effect until the Commencement Date and the Original Concession Agreement shall be terminated by mutual agreement of Operator and Contractor on the Commencement Date. The term of this Agreement (the "Term") shall commence on the Commencement Date and terminate at midnight local time on October 1, 2023; provided, however, that during each Fiscal Year during the Term, the Team has played at least thirty-eight (38) regular season NHL Home Games at the Arena. In the event that, during a Fiscal Year, the Team does not play at least thirty-eight (38) regular season NHL Home Games at the Arena, the Term shall be extended for an additional twelve (12) months. The Term of this Agreement may be terminated in accordance with the terms and conditions of this Agreement or extended in accordance with Section 6.1 (b) below.

(b) Contractor shall have the right to request to extend the Term for an additional period of ten (10) years and, subject to such extension of the Term, during such extension or renewal, Contractor may request a second ten (10) year extension, provided that, in each case, each such renewal or extension shall be upon terms to be mutually agreed between Operator and Contractor. Contractor's right to extend for the second renewal term shall only be in effect if the first extension is granted. Contractor shall exercise its rights under this Section 6.1 (b) by delivery of written notice thereof to Operator no later than twelve (12) months prior to the expiration on the then current Term. In the event that the parties shall fail to agree upon such terms of renewal within three (3) Months following the date of such notice, the rights of Contractor hereunder shall terminate and the Term shall expire on the then otherwise scheduled expiration date.

(c) If the Team's NHL franchise is relocated from Nashville, Tennessee or ceases to exist, Contractor shall have the right to terminate this Agreement by written notice to Operator, Owner and the Team.

**6.2 Surrender Upon Termination.** Upon termination of this Agreement, without regard to how such termination may be brought about (including default of any party), Contractor shall yield and deliver peacefully the Service Areas and Service Equipment to Operator in the same condition (other than the public areas) as same were delivered to Contractor, reasonable wear and tear, alterations and improvements approved by Operator, and damages from fire and other casualty excepted. All improvements and alterations to the Facility made by Contractor and all permanent affixed equipment installed by Operator or Contractor shall be the property of Owner.

## **ARTICLE VII**

### **INSURANCE, INDEMNITY AND LIABILITY MATTERS**

**7.1 Insurance.** Contractor will take out and maintain, at its own cost and expense, the following insurance coverages during the term of this Agreement in forms and with

companies rated "A-" by A.M. Best & Company, Inc.'s Key Rating Guide and licensed to do business in the state of Tennessee and reasonably acceptable to Operator. Such policies shall name Operator and the Other Beneficiaries as additional insureds and shall be non-cancelable and not subject to material change with respect to Operator and the Other Beneficiaries except after thirty (30) days written notice from the insurer to Operator as to either such condition. At all times during the term of this Agreement, Contractor shall cause certificates of such policies to be deposited with Operator together with such reasonable proof of payment of premiums as Operator may reasonably request:

(a) Public liability and property damage insurance with a single combined limit of at least One Million Dollars (\$1,000,000) for bodily injury, death and property damage;

(b) Property damage insurance with a single combined limit of at least One Million Dollars (\$1,000,000) for anyone occurrence alleged to have been caused by any act or omission of Contractor, its officers, employees, servants, agents or independent contractors;

(c) Workers Compensation Coverage and Employers Liability Insurance and other insurance coverages of a similar character applicable to or related to the employment by Contractor of all its officers, employees, servants and agents in connection with Contractor's operations at the Facility in such amounts as will fully comply with all Legal Requirements and which will indemnify and provide legal defense for the Contractor. Operator and the Other Beneficiaries against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Contractor in the course of carrying out its services contemplated in this Agreement;

(d) Excess Liability Coverage, in the amount of Five Million Dollars (\$5,000,000) in the form of an umbrella policy written on an occurrence basis rather than a following form excess policy under a policy specifically endorsed to be excess of all forms of insurance required under this Agreement;

(e) Comprehensive Automobile Liability Coverage, including bodily injury and property damage in the amount of not less than One Million Dollars (\$1,000,000) and including all motor vehicles used by Contractor in connection with the services required under this Agreement; and

(f) Comprehensive Liquor Liability Coverage, in the amount of not less than Three Million Dollars (\$3,000,000) providing protection for claims or damages, for personal injury and/or providing of alcoholic beverages at the Facility.

**7.2 Indemnity of Operator and the Other Beneficiaries.** Contractor hereby covenants and agrees to indemnify Operator and the Other Beneficiaries (each an "Indemnified Party") against, and hold them harmless from, any and all losses, costs, damages, expenses (including, without limitation, all attorneys' fees, expert fees and court costs) claims, causes of action, obligations, liabilities or alleged obligations, liabilities or losses resulting from any of the following (all of the following being hereinafter collectively called the "Claims"):

(a) Any negligent act or omission to act of Contractor, its officers, employees, servants, agents or independent contractors in connection with Contractor's operations hereunder, whether such act or omission occurs at the Facility or elsewhere;

(b) Any claim which may be made against Operator and/or the Other Beneficiaries by any Person based upon any act or omission of Contractor under this Agreement except those taken at the express direction of Operator;

(c) Any practices by Contractor which are in violation of any Legal Requirements; and

(d) Contractor's breach of any term or provision contained herein, including, without limitation, Contractor's failure to fully and timely perform any of its obligations hereunder.

If any Claim is made against an Indemnified Party, prompt written notice thereof shall be given to Contractor, whereupon Contractor shall be responsible at its own cost and expense for defending any such Claim, with counsel reasonably acceptable to the Indemnified Party, provided, however, that without in any respect limiting or reducing Contractor's obligations under this section, each Indemnified Party reserves the right, upon reasonable notice to Contractor, to select counsel of its own choosing to defend any such Claim to the extent (i) it is either required by applicable Legal Requirements; (ii) such Indemnified Party determines in its reasonable good faith judgment that there is a conflict or divergence of interest between the interest of Contractor and the interest of such Indemnified Party with respect to such Claim; or (iii) such Claim involves an action seeking relief other than money damages; provided however, such Indemnified Party shall not, by this provision, be obligated to defend any such Claim. Such Indemnified Party shall not settle any such Claim without Contractor's prior written consent, which consent shall not be unreasonably withheld or delayed.

**7.3 Waiver of Contractor.** Subject to the terms of Section 7.5 hereof, neither Operator nor the Other Beneficiaries shall be responsible to Contractor for any loss or damage to any property owned by Contractor resulting from fire, theft or any other cause unless due to the gross negligence or willful misconduct of Operator or the Other Beneficiaries, to the extent same is adjudicated by a court of competent jurisdiction; and except as above provided, Contractor agrees to assume all risk of loss, damage or destruction of any of its property, stock and supplies resulting from fire, theft or any other cause.

**7.4 Waiver.** Each of Operator and the Other Beneficiaries on the one hand, and Contractor on the other hand, and all Persons claiming by, through or under any of such parties, do hereby (i) release and discharge the other and their successors and assigns, from all claims and liabilities arising from or caused by any loss or claim of loss covered or required hereunder to be covered in whole or in part by insurance, provided, however, that with respect to Owner and all Persons claiming by, through or under Owner, any such loss shall not be deemed covered by insurance unless Owner actually receives proceeds covering such loss from an unaffiliated third Person, and (ii) agree to cause its insurers providing insurance required hereunder to waive any right of subrogation that exists in or accrues to such insurers, and agree

to evidence such waiver by endorsement to the required insurance policies.

**7.5 Fire and Casualty.** In the event that there is a fire or other casualty to the Facility, which fire or casualty also causes damage to the Service Areas and/or the Service Equipment, or otherwise affects, in any material adverse manner, as determined by Owner, the Facility in general, and Owner elects to repair or replace such damaged areas and/or equipment as the case may be, then this Agreement shall continue in effect, Contractor shall continue to operate the Sales Concession in the Facility to the extent practicable to do so; however, Contractor shall not be entitled to any monetary or other damages (of any kind) resulting from such casualty or from any resulting inconvenience or loss due to any such repair or restoration. If, however, Owner elects not to do so, or if the repair of the Service Areas and/or the Service Equipment under any such circumstances can reasonably be expected to take in excess of eighteen (18) Months to complete, then Contractor or Operator may terminate this Agreement by giving written notice to the other in which event the Sales Fee shall be paid to the date of termination with Contractor similarly having no entitlement to any monetary or other damages (of any kind) on account of such termination. If the repairs are substantial such that they can reasonably be expected to take up most of the remainder of the Term or if Operator and the Owner determine not to hold or permit any more events at the Facility, then in either of such events, Operator may terminate this Agreement by giving written notice to Contractor of such termination with Contractor similarly having no entitlement to any monetary or other damages (of any kind) on account of such termination.

**7.6 Exculpatory Language.** Contractor shall add the Exculpatory Language to all agreements it originates with respect to the operation by Contractor of the Sales Concession.

## **ARTICLE VIII**

### **DEFAULT, REMEDIES AND TERMINATION**

**8.1 Operator Event of Default.** Each of the following acts or omissions of Operator or occurrences shall constitute an "Operator Event of Default":

(a) Failure of Operator to substantially perform or observe any of the material obligations or covenants of Operator under this Agreement within sixty (60) days following receipt of written notice to Operator of such failure; provided, however, that if such performance cannot be reasonably accomplished within such sixty (60) day period, then Operator shall have a reasonable period thereafter to effect a cure provided that it is continuously and diligently prosecuting such performance or observance to conclusion;

(b) (i) The filing by Operator of a voluntary petition in bankruptcy or (ii) the adjudication of Operator as bankrupt; the approval as properly filed by a court of competent jurisdiction of any petition or other pleading in any action seeking reorganization, arrangement, adjustment, or composition of, or in respect of, Operator under the Bankruptcy Code, or any other similar state or federal law dealing with creditor's rights generally; or the appointment of a receiver, trustee, or other similar official for Operator or its property, unless within ninety (90) days after such approval of filing or appointment Operator causes such

appointment to be set-aside, dismissed or discharged; and

(c) Failure by Operator or Owner to provide Contractor with the rights and privileges afforded Contractor pursuant to Section 2.1 in accordance with its terms.

**8.2 Remedies for Operator Event of Default.** Whenever any Operator Event of Default shall occur and if such Operator Event of Default is still continuing after expiration of all applicable periods provided herein to the Operator to cure such occurrence, Contractor shall provide written notice of such continuing Operator Event of Default to Owner, following the receipt of which Owner shall have an opportunity (without any obligation) for an additional period of thirty (30) days following such receipt to cure or cause Operator to cure such Operator Event of Default; provided, however, that the foregoing additional cure period shall not be available in the event of an Operator Event of Default with respect to a default under Section 8.1(c). In the event that such Operator Event of Default shall continue after the expiration of all applicable periods provided herein to the Owner to cure or cause Operator to cure such occurrence, Contractor may pursue one or more of the following remedies: (i) terminate this Agreement by giving written notice thereof to Operator and Owner and immediately, upon receipt of such notice by Operator, this Agreement shall terminate, and (ii) bring an action in a court of competent jurisdiction for its damages, if any. Punitive, uncertain, remote, contingent or speculative damages shall not be recoverable by Contractor.

**8.3 Contractor Event of Default.** Each of the following acts or omissions of Contractor or occurrences shall constitute a "Contractor Event of Default."

(a) Failure or refusal by Contractor to timely pay the Sales Fee or any other sum due hereunder upon the expiration of a period of ten (10) days following receipt of written notice to Contractor of such failure; provided, however, it is expressly agreed that Contractor shall only be entitled to two (2) such notices in any calendar year and that the third (3rd) or successive such failure or refusal in any calendar year shall constitute a Contractor Event of Default immediately upon its occurrence without the necessity of any notice or opportunity to cure being given to Contractor by Operator whatsoever;

(b) Except as provided in Section 8.3(c), failure of Contractor to perform or observe any of its other obligations or covenants of this Agreement upon the expiration of a period of thirty (30) days following receipt of written notice to Contractor of such failure, or; if such default cannot be cured within such thirty (30) day period, then within such additional reasonable period of time (but in no event more than an additional sixty (60) days) as Contractor may require in the exercise of continuous and diligent good faith efforts to effect a cure; provided, however, it is expressly agreed that Contractor shall only be entitled to two (2) such notices in any calendar year and that the third (3rd) or successive such failure in any calendar year shall constitute a Contractor Event of Default immediately upon its occurrence without the necessity of any notice or opportunity to cure being given to Contractor by Operator whatsoever;

(c) Material failure of Contractor to provide mandated Services with respect to any event for which Contractor is obligated to provide such Services hereunder.

(d) (i) Contractor shall make an assignment for the benefit of creditors; (ii) Contractor shall file a voluntary petition in bankruptcy or seek relief under any bankruptcy or insolvency law; (iii) Contractor shall be finally adjudicated bankrupt or insolvent, or a receiver of all or any portion of Contractor's property shall be appointed in any judicial proceedings and such appointment shall not have been discharged, dismissed or set-aside within ninety (90) days; (iv) there shall be filed against Contractor an involuntary petition under any bankruptcy or insolvency law and such petition shall not be discharged or dismissed within ninety (90) days;

(e) Except as permitted by Article IX hereof, Contractor shall assign this Agreement or any rights or interests of Contractor hereunder or permit any other person, firm or corporation to exercise any part of the Sales Concession without the prior written consent of Operator (which consent may be granted or withheld in Operator's sole discretion);

(f) Contractor shall have any license or permit that is essential or material to the performance of the Sales Concession revoked or limited in any manner which prevents Contractor from operating the Sales Concession substantially as contemplated hereunder; provided, however, that any such revocation or limitation resulting from (i) the acts or omissions of Operator or Owner or (ii) the failure of Contractor to comply with, or perform. Legal Requirements adopted or imposed by a Governmental Authority which cannot be complied with by Contractor through the exercise of its reasonable best efforts and taking into account all relevant factors shall not constitute a Contractor Event of Default hereunder.

**8.4 Remedies for Contractor Event of Default.** Whenever any Contractor Event of Default shall occur, Operator may, at its option, if such is still continuing after the expiration of all applicable periods provided herein to the Contractor to cure, in addition to all other rights and remedies available at law or equity, terminate this Agreement by giving written notice thereof to Contractor, and immediately, or at any time thereafter, take full possession of the Service Equipment and the Service Areas and remove Contractor and all persons and property occupying or using any part of the Facility under this Agreement from the Facility, either by summary proceedings or by any suitable action or proceedings at law. No removal or other exercise of dominion by Operator shall be deemed to be or to constitute a conversion, Contractor hereby consenting after any Contractor Event of Default to the aforesaid exercise of dominion over Operator's property in the Facility. Contractor agrees that any re-entry by Operator may be without the necessity for any legal proceedings, and Operator following a Contractor Event of Default shall not be liable in trespass or otherwise.

Notwithstanding anything to the contrary contained in this Agreement, and without waiving any of Operator's other rights under this Agreement on account of a Contractor Event of Default, Operator shall have the right of access to and use of the Service Areas and Service Equipment to provide to patrons of the Facility the services to be provided by Contractor under this Agreement under circumstances in which immediately prior to an event (previously scheduled and actually held) in the Facility either (i) Contractor acting through its authorized representative has informed or informs Operator that it is unable or unwilling to provide the services required by this Agreement for such event or (ii) without Operator being informed of

such inability or unwillingness in accordance with (i) above, Operator reasonably believes, immediately prior to such event, that Contractor will not or cannot provide any such services to the Facility for such event. In any such event, any proceeds or receipts derived from such operation by Operator (or its designee) for such period of time that Operator (or its designee) is operating the Sales Concession shall belong solely to Operator without any accountability to Contractor therefor and any expenses incurred by Operator (or such designee) in operating the Sales Concession during such period shall be paid out of any such proceeds derived therefrom: provided, however, that in the event Operator (or such designee) sustains a loss in connection therewith (i.e., the proceeds derived therefrom are less than the cost and expenses of any such operation), then, in such event, all such losses incurred by Operator (or such designee) as a result thereof shall be repayable by Contractor to Operator upon demand. Operator's remedies shall be cumulative, non-exclusive and in addition to those available at law or in equity.

Furthermore, Operator shall, without waiving any of Operator's other rights under this Agreement on account of a Contractor Event of Default, upon the occurrence of a Contractor Event of Default, have the right, but shall not be obligated, and without waiving such Contractor Event of Default, to take such action as may be necessary to remedy such Contractor Event of Default on behalf of, and for the account of, Contractor, and upon Operator taking such remedial action Contractor shall be obligated to and hereby agrees to pay Operator, upon demand, all costs, expenses, and disbursements incurred by Operator in taking such remedial action.

## ARTICLE IX

### MISCELLANEOUS

**9.1 Transferability.** Except with respect to a Permitted Transfer, as hereinafter defined, Contractor shall not, without the prior written approval of the Operator (which approval shall be within the sole, absolute and unfettered discretion of the Operator), sell, transfer, convey, assign or dispose of, this Agreement or any of Contractor's rights hereunder or mortgage, pledge or hypothecate any such rights or grant any concession or license with respect to the rights granted hereby, and any attempt to do any of the foregoing (each of the foregoing being sometimes hereinafter referred to as a "Transfer") shall be void and of no effect whatsoever. Any Transfer of this Agreement by merger, consolidation or dissolution or any change in ownership or power to vote a majority of the Voting Stock in Contractor outstanding at the time of execution of this instrument (or at any future time) shall constitute a Transfer for purposes of this Agreement. For purposes of this Section 9.1, the term "Voting Stock" shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation involved. For the purposes hereof, the term "Permitted Transfer" shall mean a Transfer by the Contractor to a corporation, if, but only if:

- (a) The corporation is an Affiliate of Contractor; and
- (b) The Conditions to a Transfer (as hereinafter defined) are fully complied with. In no event shall Contractor make any public offer of a Transfer through any



medium of public advertising, without first obtaining the written consent of the Operator. Notwithstanding that the prior express written permission of the Operator to any Transfer may have been obtained, the following conditions ("Conditions to a Transfer") shall additionally apply to any Transfer, including any Permitted Transfer:

(c) The Contractor shall cause the transferee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Contractor under this Agreement, and such transferee shall be jointly and severally liable therefor along with Contractor;

(d) At the time of such Transfer, the Contractor shall not be in default under any provision of this Agreement;

(e) At the time of such Transfer, the Contractor shall be fully current and have fully paid and satisfied all monetary obligations arising under this Agreement;

(f) Signed counterparts of all instruments relative thereto (executed by all parties to such Transfer with the exception of the Operator) shall be submitted by the Contractor to the Operator prior to or contemporaneously with a request for the Operator's written consent thereto (it being understood that no such instrument shall be effective in the case of a Transfer, including a Permitted Transfer, without the prior written consent of the Operator; and

(g) In any case where the Operator consents (or is deemed to consent) to a Transfer, the undersigned Contractor will nevertheless remain directly and primarily liable for the performance of all of the covenants, duties and obligations of the Contractor hereunder that arise or accrue prior, on or after the effective date of such Transfer, and Operator shall be entitled to enforce the provisions of this Agreement against the undersigned Contractor without demand upon or proceeding in any way against any such transferee.

**9.2 Right to Inspect.** Operator, its officers, employees and agents shall at all times have the right to enter into the Service Areas and to inspect the Service Areas and the conduct of business by Contractor in the Facility. Operator shall not exercise such rights in a manner which would unreasonably interfere with the operation by Contractor of its business in the Facility. If Contractor fails to maintain and clean the Service Equipment or the Service Areas as provided in this Agreement, Operator shall have the right to remedy such failure and any such maintenance, or cleaning under such circumstances shall be done for Contractor's account and at Contractor's cost and expense. Contractor shall promptly reimburse Operator for any such expense upon demand.

**9.3 Relocation of Service Areas.** Operator reserves the right, with reasonable advance notice and at its expense, to relocate any of the Service Areas if such relocation is, in the complete exercise of Operator's discretion, desirable for the convenient operation of the Facility or any part thereof so long as such relocation provides Contractor with reasonably comparable facilities and space within the Facility. Operator shall reimburse Contractor for all reasonable relocation costs incurred by Contractor.

**9.4 Relationship of Parties.** The relationship created by this Agreement is that of principal and independent contractor. Neither the provisions for the payment of the Sales

Fee nor any other provision of this instrument shall be construed in such a way as to constitute Contractor and Operator or Owner as joint venturers or partners or to make Contractor the agent of Operator or Owner or to make Operator or Owner liable for the debts of Contractor. The provisions of this instrument relating to Sales Fees based upon a percentage of receipts are included solely for the purpose of providing a method for measuring the payment of fees for the granting of the rights herein granted to Contractor. No officer, employee, agent, servant or independent contractor of Contractor shall at any time be deemed to be an employee, servant or agent of Operator or Owner for any purpose whatsoever. Contractor shall require all such persons to refrain from making any representation by word or act whereby it might be understood or believed that they are employees, servants or agents of Operator or Owner.

**9.5 Facility Contract.** In no event shall Contractor have any prior right of approval with respect to any modification, renewal, extension or termination of the Facility Contract.

**9.6 Non-Disturbance and Attornment; Representations and Warranties of Operator, Owner and Team.** Prior to the Commencement Date, the Owner and Contractor will enter into a Non-Disturbance and Attornment Agreement in the form attached hereto as Exhibit B (the "Non-Disturbance and Attornment Agreement"). As of the Commencement Date, Operator, Owner and Team represent and warrant to Contractor that: (a) no party other than Owner has any ownership interest in the Facility; (b) there is no mortgage, deed of trust, security interest or other lien or encumbrance on the Facility, the Facility Contract, or this Agreement. The Owner and Operator agree to cause any successor in interest to Owner or Operator to assume any of that party's then unfulfilled and/or continuing performance obligations under this Agreement, and for the Owner, the Non-Disturbance and Attornment Agreement. Owner and Operator agree that if a mortgage, deed of trust, security interest or other lien or encumbrance is granted to any Person with respect to the Facility, the Facility Contract or this Agreement, Owner or Operator shall obtain from such Person an agreement for the benefit of Contractor providing that, so long as Contractor is not in default under this Agreement, such Person will honor the terms and conditions of this Agreement and not interfere with the operations conducted by Contractor hereunder (such agreement shall be similar in form and content to the Non-Disturbance and Attornment Agreement).

**9.7 Confidentiality of Information.** During the term of this Agreement, Contractor (its Affiliates, officers, directors, shareholders, employees, agents and representatives) may gain access to or be exposed to certain information and trade secrets of Operator and/or its Affiliates, whether relating to Operator's operations at the Facility or otherwise (other than information which is already in the public domain or generally known in the industry, or which is required to be disclosed in connection with any litigation proceedings between the parties to this Agreement, subject, however, in such latter case, to the right of Operator and/or Owner to obtain protective orders with respect thereto) (the "Confidential Information"). Accordingly, Contractor agrees, for itself (and on behalf of each of its Affiliates, officers, directors, shareholders, employees, agents and representatives) that the Confidential Information shall remain strictly confidential and shall not be disclosed to any individual, corporation, partnership, association, trust or other entity without the prior written consent of Operator. The obligation set forth herein to maintain the confidentiality of the Confidential Information shall survive the termination or expiration of this Agreement hereof and may be enforced by injunctive relief or other equitable or legal remedy without the necessity of proving the inadequacy of legal remedies and without proving that Operator or any of its Affiliates would suffer irreparable harm as a result of a violation of such obligation.

**9.8 Applicable Area.** Except with respect to Outside Catering, this Agreement shall in no respect be applicable to any part of the Nashville area other than the Facility and shall in no event authorize Contractor to exercise the Sales Concession on the street and sidewalks adjacent to the Facility or other facilities as they now exist or may be hereafter developed unless first approved in writing by Operator. If, however, at the request of, or with the approval of, Operator and with the acceptance of Contractor, Contractor shall furnish any services comparable to the Sales Concession in any of such areas or in any such additional facilities as shall be designated by Operator, Contractor agrees that the furnishing of such services shall be deemed to be the operation of the Sales Concession for the purpose of this Agreement and that prior to furnishing such services in each instance, Operator and Contractor shall agree upon a method or formula for the payment of a Sales Fee with respect to such services, if Operator and Contractor agree that such fees are appropriate.

**9.9 No Design Rights; Advertising of Names.** Contractor acknowledges and agrees that Contractor has not been granted any right or interest in the Design Rights hereunder. Except as otherwise permitted by this Agreement, Contractor shall not itself and shall not permit any subsidiary or affiliate of Contractor to advertise or promote in any way its own name or business or the name or business of any of its subsidiaries or affiliates in the Facility or on the streets and sidewalks adjacent to the Facility or use the name of the Facility or any variations thereof in any advertising, promotional or informational material, literature or publicity or on any letterhead or in any way advertise or publicize this Agreement, the transactions provided for herein and the relationships created thereby without Operator's prior written approval. No public announcement, to the press, or otherwise, of the transactions provided for herein shall be made by Contractor or Operator unless the same shall have been previously approved in writing by both Contractor and Operator.

**9.10 Notices.** Notices, approvals or other communications provided for herein shall be validly given or made if in writing and delivered by hand or facsimile, nationally recognized delivery service, mailed registered or certified return receipt requested (postage prepaid, and with a copy mailed simultaneously by first class mail) as follows:

To Contractor:

14202 Smoky Mountain Sportservice, Inc.  
40 Fountain Plaza Buffalo, New York  
Attn: Office of the President  
Telephone: 716/858-5000  
Facsimile: 716/858-5056

With a copy to:

40 Fountain Plaza Delaware North Companies, Incorporated  
Buffalo, New York 14202  
Attn: Vice President and General Counsel

Telephone: 716/858-5000  
Facsimile: 716/858-5056

To Operator:

Powers Management, LLC  
501 Broadway  
Nashville, Tennessee 37203  
Telephone: (615) 770-2349  
Facsimile: (615) 770 - 2151  
Attn: Sean Henry, President  
Attn: Michelle Kennedy, Executive Vice President

With a Copy to:

{INSERT}

and

{INSERT}

and

Director of Law  
Metropolitan Government of Nashville  
and Davidson County  
Room 204, Metro Courthouse

Nashville, Tennessee 37201  
Telephone: (615) 862-6341  
Facsimile: (615) 862-6352

and

Michelle Kennedy  
501 Broadway  
Nashville, Tennessee 37203  
Telephone: (615) 770-2255  
Facsimile: (615) 770-2470

or at such other address or addresses as may be specified by either party hereto by written notice delivered to the other as provided herein. Any such notice if sent in accordance with the provisions of this Section 9.10 shall be deemed delivered in all events on the date of delivery upon the sender's receipt of a confirmation of delivery if sent by facsimile, hand delivery or delivery source or within five (5) days following the deposit thereof in the U.S. mails as above provided.

**9.11 Amounts Owed.** All sums provided to be paid hereunder, if not paid when due, shall bear interest at the Default Rate. In the event that either party hereto defaults in the performance of its obligations hereunder and the other party brings any action or suit or proceeding to enforce its rights hereunder, the party prevailing in such suit or proceeding shall be entitled to collect from the other party in addition to all other damages and awards to which it is entitled, all reasonable attorney's fees and all other costs incurred in such proceeding.

**9.12 Non-Waiver.** No waiver by either party of any default in the terms, covenants, or conditions hereof to be performed, kept or observed by the other shall be construed to be or act as a waiver of any subsequent default of any of such terms. Acceptance of the Sales Fee by Operator for any period or periods after a default of any of the terms, conditions and covenants herein contained shall not be deemed a waiver of any right or remedy of Operator.

**9.13 Entire Agreement.** This Agreement contains the entire understanding between the parties and may not be modified except by written instrument executed by both parties hereto. No prior or contemporaneous oral or written agreements, bid solicitation, bid responses or other materials shall be binding on the parties unless expressly incorporated herein by reference.

**9.14 Nature of Agreement.** IN NO EVENT SHALL THIS AGREEMENT EVER BE CONSTRUED TO HAVE CREATED ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION FROM OPERATOR OR OWNER TO CONTRACTOR, OR FROM CONTRACTOR TO OPERATOR OR OWNER, AS TO THE ACTUAL RECEIPTS OR PROFITS WHICH ANY PARTY MAY DERIVE OR EXPECT TO DERIVE WITH RESPECT TO THE OPERATION OF THE SALES CONCESSION AND SUCH PARTIES ACKNOWLEDGE THAT NO SUCH WARRANTY OR REPRESENTATION HAS IN FACT

BEEN MADE BY SUCH PARTIES OR ANY OTHER PERSON, PARTY, FIRM OR CORPORATION.

**9.15 Force Majeure.** The following events shall constitute events of Force Majeure hereunder: acts of God, strikes and/or lock-outs (except as provided in Section 4.2(f) hereof), other industrial disturbances, acts of the public enemy, laws, rules and regulations of Government Authorities, wars or warlike action (whether actual, impending or expected, and whether de jure or de facto), arrest or other restraint of government (civil or military), blockades, insurrections, acts of terrorists or vandals, riots, epidemics, landslides, sinkholes, lightning, hurricanes, storms, floods, washouts, fire or other casualty, condemnation, earthquake, civil commotion, explosion, breakage or accident to equipment or machinery (the foregoing not intended to relieve Contractor from its repair and maintenance obligation under this Agreement), any interruption of the Utility Systems, confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination, accident, repairs, interruption in transportation or supply service or in telecommunications or other matter or condition beyond the reasonable control of either party (collectively called "Force Majeure"). Financial inability of any party to perform its obligations under this Agreement shall not be considered Force Majeure as to that party. Legal Requirements of Owner specifically directed at Contractor and not of general application which deprive Contractor of its rights and benefits under this Agreement shall not be considered Force Majeure for the benefit of Operator or Owner. In the event of an Event of Force Majeure with respect to any party, such party shall be relieved of the duty to perform its obligations hereunder (to the extent such performance is prevented or hindered by the applicable event of Force Majeure) until such time as the Force Majeure has been alleviated and in such event no such non-performance shall be an Event of Default hereunder; provided, that upon the removal of the Force Majeure, the obligation prevented from being fulfilled will be automatically reinstated without the necessity of any notice whatsoever.

**9.16 Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, without regard to the conflicts of laws principles thereof, calls for performance in Nashville, Davidson County, Tennessee and venue for any dispute arising hereunder shall lie exclusively in the state courts of Nashville, Davidson County, Tennessee.

**9.17 Partial Invalidity.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall remain valid and be enforceable to the fullest extent permitted by law.

**9.18 Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Titles of Articles and Sections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to Articles, Sections and Subsections thereof

shall refer to the corresponding Article, Section or Subsection of this Agreement unless specific reference is made to the articles, sections or subsections of another document or instrument.

**9.19 Consent.** Where “consent” or “approval” of or “authorization” (in the aggregate, a “Consent”) from any party to this Agreement to any other party to this Agreement is required hereunder, such Consent shall mean, in the case of the Operator, the Consent of its General Manager at the Facility, or such other representative as may be designated, from time to time, in writing, by Operator, and in the case of Contractor, the Consent of its General Manager at the Facility or such other representative as shall be designated in writing, from time to time, by Contractor. Each party hereto agrees that, except as otherwise provided in this Agreement, whenever the prior Consent of a proposed action is required, it will not unreasonably withhold or delay such Consent. Each party also agrees that if it fails to either approve or disapprove a request for a Consent for a period of twenty (20) days (after receipt of a written request therefor) or such other time period as may be otherwise required pursuant to any particular provision of this Agreement, such Consent shall be deemed denied.

**9.20 Estoppel Certificates.** Contractor shall, from time to time upon the request of Operator or Owner, execute and deliver to the Operator or Owner, as the case may be, a statement satisfactory to both Operator and Owner in form and substance reasonably acceptable to such parties certifying to the extent true and ascertainable:

(a) That this Agreement constitutes the entire agreement between Operator, on behalf of Owner, and Contractor, and is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications);

(b) The date to which the Sales Fees hereunder have been paid;

(c) That Operator and Owner are not in default under this Agreement (or under the Letter of Authorization) and that, to the best of Contractor's knowledge, no circumstance exists which, with the giving of notice, the passage of time, or both would constitute a default by Operator or Owner hereunder or thereunder or if a default is claimed to exist, the nature thereof;

(d) The expiration date of the Term;

(e) Any other matters relating to the status of this Agreement or the condition of the Facility that Operator or Owner may reasonably request. Such statement shall be delivered to Owner and/or Operator (as the case may be) no later than twenty (20) business days after Contractor's receipt of a request therefor.

**9.21 Sovereign Immunity.** Contractor acknowledges and agrees that the sovereign immunity of Owner shall not apply to Contractor, nor any subcontractor, agent, employee or insurer of Contractor. Accordingly, neither Contractor nor any subcontractor, agent, employee or insurer of Contractor shall plead the defense of sovereign immunity in any action

arising out of the performance of or failure to perform any responsibility or duty of the Contractor under this Agreement.

**9.22 Applicability to National Basketball Association Team.** Operator and Contractor acknowledge and agree that in the event that Operator and/or Owner secures a National Basketball Association (“NBA”) franchise (an “NBA Team”), which NBA Team utilizes the Facility as its “home” arena, then any and all references in the Agreement to the “NHL” or the “NHL Team” shall be deemed to likewise apply to the “NBA” of the NBA Team irrespective as to whether the NHL Team in fact utilizes the Facility for its NHL Home Games.

**9.23 Street Vendors.** Owner shall use its reasonable efforts to cause the adoption or amendment of such Legal Requirements as shall be necessary in order to make available to the Facility the same protections against prohibited sales as afforded the Nashville Convention Center under Chapter 6.32 of the Code of Laws of The Metropolitan Government of Nashville and Davidson County.

**9.24 Limitations on Legal Requirements.** Notwithstanding anything contained herein, the parties hereto hereby acknowledge and agree that the power and authority to adopt rescind or amend laws for Nashville and Davidson County resides with the Metropolitan County Council and that nothing contained herein shall (i) in any way obligate the Metropolitan County Council to adopt, rescind or amend any applicable Legal Requirements, or (ii) subject Owner or Operator to any liability on account of the Metropolitan County Council's failure to adopt, rescind or amend any applicable Legal Requirements.

**9.25 Guarantee by the Team.** The Team hereby unconditionally and irrevocably guarantees to Contractor the full and timely payment and performance of all sums and obligations now or hereafter due and owing by Operator to Contractor under Section 3.7 of this Agreement (the “Team Guaranteed Obligations”), and agrees to pay to Contractor the amount of any payments made to Contractor in connection with any of the Team Guaranteed Obligations that are recovered from Contractor by a trustee, receiver, creditor or other party acting in respect of Operator pursuant to applicable law.

This guarantee covenant and obligation is and shall for all purposes be deemed to be a guarantee of payment and performance, and not merely a guarantee of collection. If any default is made by Operator in the payment of the Team Guaranteed Obligations, or any portion of the Team Guaranteed Obligations, and such default continues following notice to Operator and the Team and expiration of applicable periods for cure by Operator, Team shall pay and perform such Team Guaranteed Obligations and the Team unconditionally and irrevocably waives each and every defense that, under principles of guarantee or suretyship law, would otherwise operate to impair or diminish such liability, and nothing whatever except full payment and performance to Concessionaire of the Team Guaranteed Obligations shall operate to discharge the Team’s liability hereunder; provided that Team shall enjoy (jointly with Operator): (i) any and all defenses of Operator with respect to any Force Majeure event or any Contractor Event of Default (but, specifically excluding any and all defenses arising at law, in equity or otherwise out of the financial incapacity of Operator or the filing of a bankruptcy petition by or against Operator; and (ii) all rights hereunder of Operator to enforce the obligations of



Contractor described in this Agreement and Operator's rights under this Agreement. Team hereby acknowledges and agrees that this Team's guarantee of the Team Guaranteed Obligations hereunder is a required inducement and condition imposed by Contractor to enter into this Agreement and Contractor has required the guarantee of the Team Guaranteed Obligations because the separate existence and creditworthiness of the Team and considered essential to secure full and timely payment and performance of the Team Guaranteed Obligations.

EXECUTED in multiple counterparts. each of which shall be deemed an original as of the \_\_\_\_\_ day of June, 2011.

OWNER:

Powers Management, LLC, as agent for Owner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OPERATOR:

Powers Management, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONTRACTOR:

Smoky Mountain Sportservice, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Nashville Hockey Club Limited Partnership**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_